United States Court of Appeals for the Second Circuit



APPENDIX

(42166)

75-7240

United States Court of Appeals

FOR THE SECOND CIRCUIT

United States Labor Party, a/k/a National Caucus of Labor Committees; Anton H. Chaitkin; Elijah C. Boyd; David Wolinsky; Robyn Press; Jeffrey Bryan,

Plaintiffs-Appellees,

against

MICHAEL J. Codd, individually and as Commissioner of the Police Department of the City of New York; and Anthony Elar, individually and as Chief of Police of Freeport, Long Island,

Defendants-Appellants.

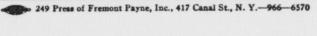
On Appeal from the United States District Court for the Eastern District of New York

APPELLANT'S APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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Relevant Docket Entries.

United States Labor Party, et al vs. Codd, et ano

DATE	FILINGS—-PROCEEDINGS
8-15-74	Complaint filed. Summons issued.
8/15/75	Before Neaher, J.—Case called—Hearing held —Hearing adjd to Aug. 20, 1974 before J. Weinstein,—Hearing on motion for preliminary before J. Weinstein—Aug. 20, 1974.
8-20-74	Amended complaint filed.
8/21/74	Pltff's Memorandum of Law in Support of Complaint filed.
8/21/74	Copy of Order granting preliminary injunction dated Aug. 8, 1974 filed.
8-23-74	Pltffs' memorandum of law in support of complaint filed.
8-20-74	Before Weinstein, J.—Case called. Hearing ordered held & concluded. Motion for preliminary relief is granted. Submit order.
9-18-74	Deft Michael J. Codd's answer to first amended complaint filed by Weinstein, J.—Order of Dismissal dated Oct. 2, 1974 filed. P.C. mailed to the attys.
10/ 2/74	
11/ 7/74	Copy of Letter dated Nov. 3, 1974 filed from J. Carlisle, II to Mr. Lawson.
11/ 7/74	By Weinstein, J.—Order dated Nov. 5, 1974 filed that the hearing date is Jan. 13, 1974, etc. (on Doc. #8)
12/ 6/74	Pltff Anton Chaitkin's First Answers to deft Michael J. Codd filed

Relevant Docket Entries.

DATE	FILINGS—PROCEEDINGS
12/18/74	By Weinstein, J.—Order dated 12/17/74 filed that the above case the adjd. to 1/20/75. Copy of Order sent to all parties.
12/20/75	Before Weinstein, J.—Case called—pretrial conference adjd to 2/20/75 at 9:30 A.M.
2-20-75	Pltffs trial memorandum filed.
2/24/75	Before Weinstein, J.—Case called—Trial ordered non jury and begun—Pltff and deft rest—Trial concluded—Decision reserved—Submit briefs within 10 days.
3-11-75	Defts' post trial memorandum of law filed.
3–11–75	By Weinstein, J.—Memorandum and order dtd 3-11-75 granting permanent injunction against collection of fees required by NYC ordinance § 435-6.0 as it is unconstitutional filed. (p/s mailed to attys).
4-10-75	Notice of appeal filed. Copy sent to C of A. JN
4-16-75	Letter from Jay C. Carlisle II dtd 1-7-75 filed.
4-18-75	By Weinstein, J.—Order to show cause dated 8-15-75 filed.
4-18-75	Pltffs' interrogatories to Deft Codd filed.
4-18-75	Stenographer's Transcript dated 8/15/74 filed.
4-18-75	Deft Codd's Memorandum of Law filed (dated Aug. 19, 1974) filed.
4-18-75	Affidavit of Luis Neco in opposition to injunctive relief filed (dated Aug. 19, 1974).
5/12/75	Filed. Transcript dated February 24, 1975.
5/15/75	Clerk's Certificate.
6/12/75	Filed Transcript dated August 20, 1974.
6/12/75	Supplemental Clerk's Certificate.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

United States Labor Party, aka National Caucus of Labor Committees, Anton H. Chaitkin, Elijah C. Boyd, David B. Wolinsky, Robyn Press, and Jeffrey Bryan

Plaintiffs.

vs.

MICH LEL J. CODD, individual and as Commissioner of the Police Department of the City of New York and Anthony Eler, individual and as Chief of Police of Freeport, Long Island,

Defendants.

FIRST AMENDED COMPLAINT

PRELIMINARY STATEMENT

This is an action for injunctive relief and damages. It is authorized by Title 42 U.S.C. Section 1983. Plaintiffs allege that the defendants, while acting in the scope of their authority as police commissioner and police chief and agents, servants and employees of said defendants, while acting under color of law have deprived plaintiffs and the class which complainants seek to protect, of the privileges and immunities guaranteed to every citizen of the United States, including plaintiffs, by the U.S. Constitution, Amendments I, V, VI, VIII, and Section I of Amendment XIV. Plaintiffs bring this action on their own behalf and on behalf of others similarly situated who are members of the United States Labor Party pursuant to Rule 23 of the Federal Rules of Civil Procedure. The class represented

by the plaintiffs consists of all members of the United States Labor Party who are now or may become involved in the forthcoming primary and general elections for state and federal offices to be held in this district. The class is so numerous that joinder of all members is impractical and there are questions of law and fact common to each member of the class and the claims of the representative plaintiffs are typical of the claims of each member of the class. The representative plaintiffs will fairly and adequately protect the interest of the class. The party defendants have acted and refuse to act on grounds generally applicable to the plaintiffs' class and therefore the injunctive relief sought herein is appropriate with respect to the class as a whole.

JURISDICTION

Jurisdiction is conferred on this court by 28 U.S.C. Section 1343 (3) and (4).

PARTIES

- 1. Plaintiff United States Labor Party "USLP" also known as the National Caucus of Labor Committees, "NCLC" is an unincorporated socialist political organization who at all material times herein represents—class of persons seeking and supporting candidates seeking political office in the State of New York and in the United States Congress.
- 2. Plaintiff Ar on H. Chaitkin, "Chaitkin", is the USLP candidate for Governor of New York and is campaign director for the USLP.
- 3. Plaintiff Elijah C. Boyd, "Boyd", is the USLP candidate for United States Senator from New York.

- 4. Plaintiff David B. Wolinsky, "Wolinsky", is a member of the USLP and is a team leader of a group of USLP members who collect signatures to place the USLP candidates on the bellot in New York State.
- 5. Robyn Press, "Press", is a member of the USLP and of a group whose purpose it is to gather signatures to place USLP candidates on the ballot in New York State.
- 6. Plaintiff Jeffrey Bryan, "Bryan", is a member of the USLP and of a group whose purpose it is to gather signatures to place USLP candidates on the ballot in New York State.

Each of the foregoing plaintiffs, with the exception of the USLP, are citizens of the United States and reside in New York City.

- 7. Defendant Michael J. Codd, "Codd", is the Commissioner of the Police Department of New York City and at all material times herein acted and acts in such capacity.
- 8. Defendant Anthony Elar is the Chief of Police of Freeport, Long Island and at all material times herein acted and acts in such capacity.

ALLEGATIONS

- 1. Plaintiffs are engaged in the process of gathering petition signatures to place the names of USLP candidates on the ballot for election to state and national office, all as set forth with more particularity in the affidavit of plaintiff Chaitkin with references thereto, which is attached hereto as Exhibit "A" and incorporated herein by reference.
- 2. In order to gather such signatures plaintiffs, and the class they represent, are required to conduct street campaigns wherein they endeavor to obtain petition signatures.

- 3. Plaintiffs use sound amplification equipment, "bull-horns", to inform residents of the State of New York that said plaintiffs are obtaining petition signatures and in so doing plaintiffs seek to comply with Section 435 (6) of the New York City Ordinances and other applicable ordinances.
- 4. Defendant Codd, by and through his agents has and is applying Sec. 435 (6) of the New York City Ordinances against plaintiffs when such ordinance is unconstitutional. (See exhibits "G" and "H".)
- 5. In the alternative, on numerous occasions defendant Codd acting under color of law, by and through his agents, employees, and servants, each of whom have acted under color of state law, statutes, regulations, customs and usages of this state has (have) systematically applied Section 435-6.0 in a manner designed to deprive plaintiffs of their first and fourteenth amendment rights under the U.S. Constitution and to a denial of plaintiffs equal protection of laws in that said defendant, by and through his agents, has caused to happen the following events:
- (a) Plaintiffs request to hold a rally at a certain site and to obtain a permit thereon are denied on the basis which plaintiffs claim to relate primarily to defendants dislike of plaintiffs political philosophy and defendants desire to interfere with plaintiffs right to freedom of speech and assembly; (see affidavit of William Bracey attached as Exhibit "E".)
- (b) Defendant Codd, by and through his agents, has and does systematically refuse to grant alternative sites for plaintiffs to carry on their political petition rally campaigns;
- (c) Defendant Codd, by and through his agents, requests that plaintiffs pay five dollars for each permit site

and defendants agents rigid and discriminatory enforcement of said requirement causes plaintiffs political candidates to spend large sums of money all of which plaintiffs allege to be in violation of their rights to freedom of assembly and which plaintiffs believe to constitute an illegal tax upon their political and electoral activities, and prevent plaintiffs from fully exercising their free speech rights under the First Amendment;

- (d) Defendant Codd, by and through his agents, will arrest, detain, or otherwise interfere with plaintiffs campaign signature gathering under the guise of enforcing Ordinance 435-6.0 and that the same is done with the deliberate intent to disrupt and interfere with plaintiffs lawful right to gather such signatures; in furtherance of such interference Codd's agents have caused the following to happen:
- (1) On or about August 7, 1974, at 181st Street and St. Nicholas Avenue, USLP member Ralph B. was accosted by police officers (badge numbers: 24623, 31976, 1623, 9788, and 1965) and instructed to stop using the bullhorn.
- (2) On or about August 5, 1974, USLP member Susan Hendricks, was accosted by police officers (badge numbers: 867037, 13933, and 1143) at 72nd Street and Broadway, and together with other USLP members, was given two parking tickets and one summons.
- (3) On or about August 9, 1974, plaintiff Chaitkin was stopped by two police officers (badge numbers unknown) at 34 Street and Broadway, and instructed not to use bullhorn.
- (4) On or about August 5, 1974, at 72nd Street and Broadway, USLP member Barbara Klopper, was stopped by police officers (badge numbers unknown) and instructed to stop using a bullhorn.

- (5) Further such specific incidents are set forth in Exhibit "G" attached hereto and incorporated by reference.
- 6. On numerous occasions defendant Codd, by and through his agents, has caused plaintiffs to be arrested, to receive summons, and to be subjected to periodic involuntary detention. Such action of defendant Codd's employees constitute a deliberate plan to subvert plaintiffs petition campaign, all as set forth with more particularity in the affidavit of plaintiff Chaitkin, attached hereto as Exhibit "A" and in supporting affidavits thereto plaintiffs Press, and Bryan, which are attached hereto as Exhibits "B" and "C" and incorporated herein by reference, and as set forth in a list of specific incidents attached hereto as Exhibit "G" incorporated herein by reference.
- 7. In addition to police interference referred to in the above attached affidavits, other members of the USLP (Lorinda Langley and Norman Sloane) were arrested on August 14, 1974, in New York City, and charged with disorderly conduct all while engaged in the gathering of petitions. In addition one Lennie Smith was arrested on August 10, 1974, while petitioning, and charged with disturbing the peace. On August 13, 1974, three members of the USLP Robin Press, Jeff Bryan and James Lee Ravenscroft, were arrested as set forth on page 4 of Exhibit "G". The same day, one Peter Wyer was arrested for distributing pamphlets as set forth in page 4 of Exhibit "G". Further such instances of detention and harassment are set forth in Exhibits "A" and "G" attached hereto and incorporated herein by reference. Plaintiffs believe that charges of disorderly conduct and disturbing the peace are used against them to interfere with their petition campaign.
- 8. Defendant Elar, by and through his agents, has caused members of the USLP to be arrested for "loafing" and

other charges which clearly have no basis, but are used to interfere with plaintiffs rights to gather petitions. See Exhibit "D".

- 9. Defendant Codd and defendant Elar have had knowledge of the actions of their subordinates and nevertheless permit such conduct by their agents to continue. Furthermore, said defendants make no effort to stop such conduct of their agents.
- 10. Each of the foregoing acts of the defendants, by and through their respective agents has been committed in bad faith and with wanton disregard of the plaintiffs constitutional rights and each such act represents an abuse of defendants statutory authority under state law.
- 11. Plaintiffs believe that defendants will continue to engage in the aforementioned acts, and are fearful that such conduct will cause them immediate injury and harm and that if the relief sought herein is not granted plaintiff will suffer irreparable damage in that they may be unable to gather enough petition signatures to be placed on the ballot for pending state and federal elections. Likewise plaintiffs believe that if injunctive relief herein is granted that neither the defendants nor their agents and employees will suffer harm.
- 12. Plaintiffs are without adequate funds or finances to furnish a bond, and believe that the same is not specifically required by law by is a matter of discretion to be determined by this court.
- 13. Plaintiffs have also been damaged by the actions of the defendants herein and believe that compensatory damages are necessary to adequately compensate them for such damages.

14. Plaintiffs are without funds to pay their attorney for legal counsel herein and plaintiffs have reason that said attorney will be required to devote considerable time to this matter and that his fee herein should be paid for by the defendants.

PRAYER FOR RELIEF

Wherefore the plaintiffs respectfully pray that this Court:

1. Enjoin the defendants, their officers, agents, servants, and employees for the duration of the petition period (i.e.: until September 13, 1974) from depriving plaintiffs of their constitutional rights and of equal protection of the laws and more specifically to: (a) enjoin defendant Codd, his agents, servants, and employees from enforcing New York City ordinance § 435-6.0 against plaintiffs herein on the grounds that it is unconstitutional in that it is prior restraint upon the exercise of the plaintiffs right of free speech and their free exercise of their electoral rights; (a) and defendant Codd, his agents, servants and employed from forcing plaintiffs to pay the five dollar fee under New York City ordinance S. 435-6.0 on the grounds that such fee constitutes an illegal tax which is violative of the First Amendment of the U.S. Constitution; (c) enjoin defendant Codd, his agents, servants and employees from enforcing New York City ordinances S. 435-6.0 against plaintiffs herein insofar as said employees of defendant Codd seek to enforce said ordinance with discrimination against plaintiffs or in such a manner as to impose an intolerable burden on plaintiffs; (d) enjoin Codd, his agents, servants and employees from interfering with plaintiffs while said plaintiffs are securing petition signatures for political office or engaging in other lawful political activities; (e) enjoin Codd, his agents, serv-

ants and employees, from interfering with plain iffs rights to contact and to speak with members of the public regarding political issues; (f) enjoin defendant Elar, his agents, servants and employees, from interfering with plaintiffs as set forth in subparagraphs (d) through (e) above.

- 2. Pending a trial upon the merits of this complaint issue a preliminary injunction without bond enjoining the defendants in the aforesaid manner.
- 3. Pending a hearing on the preliminary injunction and notice of the same as required by law, issue a temporary restraining order without bond, restraining said defendants in the aforesaid manner.
- 4. Award plaintiffs damages in the sum of \$100,000 together with the costs and disbursements of this action and in addition thereto attorney fees and such other and further relief as the Court may deem just and proper under the circumstances.

Respectfully submitted,

JAY C. CARLISLE II

Affidavit of Anton H. Chaitkin.

State of New York County of New York

Anton II. Chaitkin, being duly sworn, dopose and say:

- 1. I reside at 4 Bogardus Place, New York, N.Y. and I have lived there for the last six years.
- 2. I am the candidate of the United States Labor Party ("Labor Party) for governor of New York State, running in the 1972 elections. I am also campaign director for the Labor Party.
- 3. The Labor Party is currently engaged in the collection of signatures from qualified voters to petitions nominating the Labor Party and its nine candidates for elective office within New York State, under an independ nant party status on the 1974 New York State election ballot. We are running candidates for governor, lieutenant governor, United States Senator, State Attorney General, Congressional representitives from the 37th and 20th districts, and city council on Syracuse.

To comply with legal requirements for achieving said ballot status is a complicated and arduous tasks involving the following effort:

- a. That a group of well over one hundred volunteers must be trained and instructed in the legal requirements and practical techniques both for collecting the necessary signatures and guarding the validity of the petitions.
- b. That these volunteers must collect and cause to be obliantidatisticant: 22; 160sta10; 000gwatidaxignatahusstatewidexsla collected at least 20,000 valid signatures for the statewide

slate of candidates, and at least 10,000 valid signatures to cover the other four offices sought. In practical terms at least twice the number of required valid signatures must actually be collected to insure that, after an allowance for possible involid signatures despite scrupulous regard for legal for legal procedures, the remaining signatures after discounting invalid signatures will constitute at least 60,000 signatures in toto, to be collected and checked by the Labor Farty in the petition period, which under New York State law lasts from August 2 nd and September 12 th.

- c. To secure these signatures at least 3000 man-hours perweek are being expended by campaign volunteers and organizers throughout the state.
- d. These campaign supporters must act in an extremely disciplined and vigorous fashion, expending great mental and physical effort over an extended period of time.
- e. Many campaign workers have taken and are taking time off from their jobs, voluntarily suffering losses in income, to accomplish the signature gathering.
- f. The gathering and processing of signatures must be supported by the expenditure of several thousands of dollars for literature, permits, forms, clerical services etc.
- g. In historical experience, challenges to the validity of petitions submitted by those sceking independent party status are frequently made at the close of the petition period. Considerable legal and other strategic planning must take place and

strenouseffort must be taken throughout the petition period
to ensure that the party finally achieves the ballot status sought.

4. Said efforts by the Labor Party in fulfillment of the New
York State election laws during the current petitioning period
have been harassed and disrupted by police agencies acting in
flagrant disregard and contravention of the rights and duties of
the Labor Party in the electoral process. This illegal and
outrageous interference has occured within areas under the
jurisdiction of the Eastern District Court - in Kings and
Queens counties, and on Long Island outside New York City,
as well as in other areas of New York State.

- 5. Since the official petitioning period began on August 2nd, 1974, Labor Party organizers deployed in teams carrying out petitioning in the areas of Kings and of Queens counties and Long Island have suffered ten (10) arrests a nd/or detainments by police. Other arrests and detainments have occured in Manhattan, Buffalo and in Rochester. In Kings and Queens counties and Long Island during this period, twelve (12) summonses for alleged violations of law, requiring court appearances have been issued to Labor Party supporters, deployed on petitioning teams.
- 6. The charges under which these a rrests and citations have taken place have been without cause, and of an arbitrary, capricious and absurd nature, ranging from "hawking in one place for more than ten minutes" to "loafing and loitering" to "distrubing the peace."

- 7. On several occasions during the police interference, police officers have spoken and acted in such a fashion as to intentionally place discredit upon the Labor Party and its candidates, portraying the Labor Party before potential signators and voters as lawless, irresponsible and without serious intent. The arrests and jailings themselves tend to create this same unwarranted impression.
- Labor Party campaign organizers within King and Queens counties and Long Island during the current petition period alone have resulted in the loss of approximately 35 man-hours of organizers' time, otherwise spent in gathering or supporting the gathering of signatures for the said petition. This time lost is tied directly to petition checking and to other clerical functions which therefore will not take plave on the ungathered signatures. Those arrested and those served with summonses are further required to spend further precious, irreplaceable time in court in the near future, thereby further detracting from the petitionic effort.
- 9. The defense of a rrested and detained Labor Party organizers requires the employem ent of lawyers at considerable monetary expense, and the expenditures of considerable time and effort by volunteer workers who might otherwise be contributing to the general effort to achieve ballot status within the allotted time.
- 10. Court appearances by cited Labor Party organizers require in several instances the missing of many hours or days of gainful employment.

- 11. The combined effects of continued, repeated, arbitrary and unlawful interference and disruption by police agencies, in the several areas of New York State where petitioning must take place, threaten to curtail successful signature gathering to such an extent that the Labor Party would not achieve ballot status and thus: would be denied due process, the right to participate in the elections; will suffer the net wasteful expenditure of many thousands of hours of arduous efforts and thousands of dollars of money expended and income from employment voluntarily given up; and because of lack of official ballot status the Labor Party and its candidates would suffer severe hardship with regard to reputation, political influence and so forth.
- 12. The court's attention is drawn to the fact that on Aug. 8/974

 Tederal

 the District court in product issued a n

 Columnary hyperoteer restraining the police in the City of

 Buffalo from continuing to unlawfully interfere with the

 political activities of the Labor Party during the current

 petitioning period.
- 13. I therefore ask that relief requested be granted so that I and my party may carry out our lawful political activities, and the legal duties which the state lays upon us in pursuit of those activities.
- 14. Accompanying affodafi... represent typical cases of harassments, their illegal nature and other dubious circumstances.

Is day of august 1974 Leanne Kraner

anton M Chartken

Affidavit of Robyn G. Press.

State of New York City of New York Kings County August 13, 1974 Robyn G. Press

- I, Robyn G. Press, depose and say:
- 1.) That my address is 68 East 19th Street (Brooklyn) and that I have lived there for eight months. I am 20 years of age, and am an organizer and member of the National ACaucus of Labor Committees.
- 2.) That on August 13, 1974 I was distributing political literature and collecting contributions for the U.S. Labor Party campaign in front of Dean Unemployment Center (Brooklyn). I was accompanying two petitioners for gubernatorial and other offices, Jeffrey Bryan and James Lee Ravenscroft, also members of the NCLC. I was informing people at that location about what the U.S. Labor Party represents and new we must collect 40,000 signatures statewide to get on the ballot for this November's elections. Some people stopped to talk to me and ask such w questions as, "What are we going to do about this economic/political situation? What does the Labor Party suggest doing?"
- 3.) In response to these inquiries about the petitioners I was with, I responded that people must read "New Solidarity" (the newspaper of the National Caucus of Lator Committees, the parent organization of the U.S. Labor Party), and I requested contributions for "New Solidarity."
- 1.) Interested persons were engaged in intense political discus-

sions with me, as many were agitated about what had happened in the government. People never became hostile to me, and when they sometimes insisted that they "weren't interested," I left them alone and walked away.

- 5.) At that point, Officer Michael Frantangelo (badge number 17328) called me over to where he and another officer were standing, near the place I had been organizing. He said, "You better stop bothering people, or I'm going to arrest you." I replied, "I am performing a legal action by distributing political literature, and I am not bothering people." He said, "Yeah, well, I can take you in for obstructing the sidewalk, so you'd better be careful." I walked away, to rejoin the two petitioners, Jeffrey Bryan and James Lee Ravenscroft.
 - officer walked over to where we were organizing (after staring fixedly at us for some time) and arrested us. When we explained again to them that we were within our legal rights to potition for a legitimate political party and distribute political literature, Officer Frantangelo remarked, "I don't care...you can tell that to us later, after we get to the station. We're taking you in for disturbing the peace." He then turned to the other officer and said, "Remember, they were peddling literature, too."

 7.) We were driven to the police precinct by two other officers who refused to answer any of our questions, again repeating,

"We can't talk to you. You'll have to talk to the arresting

officers when we get to the station."

8.) After about a half an hour of delay, we asked Officer Frantangelo and anDetective Berrecka when we would be released. They refused to tell us what they were discussing in the other room, and it became obvious that they were needlessly detaining us. Frantangelo stated that we would be there "for a couple of hours," and that we "might be arrested...and put into jail." We again stated that there were no legal grounds for arrest. We were each allowed one phone call. Finally, after one and one half hours, we were released (about 11:45 a.m.) after Frantangelo had written out three summonses for disturbing the peace.

Robyn G. Press

Notary Public

Affidavit of Jeffrey Bryan.

City of New York
New YORK COURTY

August 13, 1974

Joffrey Bruen

- I Jeffrey Bryan, depose and say:
- 1. That I live at 94-11 212 street Queens Village N.Y. 11429, and have lived there since Movember 1973.
- 2. That on the morning of August 13, 1974, Robin Press, James avenboroftand I were legally collecting signatures for our petitioning compaign to put the U.S. Labor Party on the bellot.
 - 3. That at approximately 10:15 A.M. two policeman standing one half block away warned Robin Press that she was illegally harrassing people by asking them to buy our newspaper.
 - 4. That at 10:30 these two officers (Frantangelo, #17328, and Brillante 1712) approached and informed us that we were under arrest for disorderly conduct.
 - 5. That I informed officer Frantangelo that we were engaged in a legal petition drive, and he responded with "I don't care, you are still under arrest."
 - 5. That we ware taken to the 78th Precent House by a squad car that pulled up immediately.

- 7. That we were informed, at the precinct, by officer Frantangelo, that he had to decide wather to book us or just give us a surmons.
- E. That the two officers discussed, for approximately one hour, our case and finally decided to give us a summons.

 9. That at 12:00 F.M. we were released from the precinct.
 The total time between arrest and release was one and one half hour.
- 10. That during the time we were prevented from continuing; our petition campaign, we lost four and one half man hours of work, causing us to loose approximately fourty-five signatures and not sell twenty papers.

Jeffrey Bryan

Jeffrey Bryan

Sworn and subscribed before me

this

13

Day of August 1914

Notary Public, State of Now York
No. 31-7366215
Qualified in New York County
Commission Expires March 30, 197-2

Notary Public

Affidavit of David B. Wolinsky.

CIF

AFFADAVIT

STATE OF NEW YORK

DAVID B. WOLINSKY, being duly sworn, deposes and says:

1. I am 26 years old and reside at 1825 Harrison Ave.,

Bronx, N.Y., where I have lived for the past six years.

2. I graduated from the City College of New York in January,

1969, with a B.A. degree.

- 3. I am a member of the U.S. Labor Party, wherein one of my responsibilities is to lead teams of petitioners in collecting signatures to legally place the Labor Party on the ballot in New York State.
- 4. I am a registered voter in New York State and a qualified witness for such signatures on nominating patitions.
- 5. On August 12, 1974 I was leading a team of petitioners composed of myself, Linda Ray, and Norman Sloan, outside of the State Unemployment Office in Freeport, Long Island, N.Y.
- 6. The team was divided such that Linda Ray and myself were asking people to sign the nominating petitions to put the Labor Party on the ballot, and Worman Sloan was distributing campaignliterature the New Bolidarity newspaper and other magazines and requesting donations to the campaign. Linda Ray and myself were carrying the petitions, a leaflet entitled

"Which Way Will You Go in 1974?" and no other printed matter.

7. Anton Chattkin is the Labor Party's candidate for Governor of New York State; his name appears at the top of a slate of statewide candidates on the nominating petitions we are companied.

- 8. There was creat interest and resitive response to our petitioning, as evidenced by a rate of about 10 signatures per petitioner pashour, about twice the rate we have experienced in New York City to date, and correspondingly high sales of New Soldarity, headlining Ru the Rockefeller tekeover of the U.S. government.
- and "If your against Rockefeller then I'm for you".
- 6. At about 11 a.m. the director of the Unemployment Office, upon information and belief, approached Linzda Ray and told her that we were on a private sidewalk, and that we were blocking it.
- 7. I heard the woman yelling and informed her of our right to collect signatures to place our candidates on the ballot. Her reply was "I've had too much of you people already. Just watch how fast the police come."

A

- 8. Minutive bankix! About 1 1/2 hours later, upon information and belief, Norman Shoan was hawking New Solidarity in front of the Unemployment office, when he was approached by a policeman who warned him that there had been a complaint, and not to block the sidewalk. Both Linda Ray and myself were in a restaurant at the time.
- 9. At about 2:30 pm, three Freeport policemen appeared walked down the street past both Linda Ray and myself, and started talking to

Norman Sloan, who was an half block from where I was standing.

16. I approached and was told by one of the policemen that we would have to stop petitioning and leave; that if we continued to petition we faced arrest. I asked him what the charge was and he replied, after some hesitation, "Loafing". Then he noticed a campaign poster taped to a pole and said: "here, this is illegal too".

11. T replied that we were collecting signatures to place Labor Party candidates on the ballot in a public place, were not blocking the side-walk, and would not allow an infringement of our right to petation.

12. The policemen responded by placing the three of us under arrest.

13. The three of us were held at the police station for approximately six hours, until 8:30 pm, and as a result were unable to continue petitioning, engage in the processing of the signatures or conduct other electoral activities we would have normally been engaged in during that time.

Sworn to before me this

13 th day of August, 1974 David Work

Nothery Public, State of New York

Ruslyman in Now your Country Mildfolds

10 manuscent Reserver 3/30/76

Affidavit of William Bracey.

- I, the undersigned, William Bracey, do hereby swear and depose that:
- 1. On July 16, 1974 I applied for a sound permit at the 103rd Precinct House of the New York Police Department in Jamaica, Queens. The permit was to be for a United States Labor Party rally at the corner of 168th Street and Jamaica Avenue on Saturday July 20th. A permit for this site was denied by an officer in the clerical department for the following reasons:
 - a. There is too much traffic in the area and a crowd overflow would stop traffic on Jamaica Avenue.
 - b. The drawing of a crowd could lead to a riot.
 - c. Shopkeepers in the area had complained about rallies on Jamaica Avenue.
 - d. The officer stated that he had told the U S labor Party several times that no permits were issued for the corner of 168th and Jamaica Avenue, and that he was under orders from his superiors to issue no such permits.
- 2. On the same day, at the 44th Precinct House in the Bronx, I applied for a sound permit for a U S Labor Party rally at Jerome Avenue and 170th Street to be held on Saturday, July 20th. An office in the clerical office stated the following reasons when he denied my application:
 - a. The area is too busy and a rally would block traffic.
 - b. Shopkeepers in the area had complained about previous rallies.
 - c. There are government buildings on the corner of Jerome Avenue and 170th Street.

The officer also said that the order had come from his superiors that no sound permits could be issued for that corner. The US Labor party has had several rallies with sound devices on 170th Street and Jerome Avenue previous to July 16th, 1974.

3. On Saturday, August 3, 1974, I was driving a U S Labor Party soundcar down Broadway. The car was stopp, between 71st and 72nd Streets by a squad car from the 20th Precinct in Manhattan. I was issued summons #422308320 for using a sound device without a permit. The summons requires a court appearance at 346 Broadway on September 1. 1974. The two officers in the squad car were Steinberg, Badge #2 185 and Cripie, Badge #11196. They told me that the commanding officer in the 20th Precinct is Inspector Bluchino.

Signed/5/

Harassment in the New York Region From August 8, 1974 to August 18, 1974.

HARASSMENT IN THE N.Y. REGIONAL 8/4 TO 8/18

The police forced a W.S. Labor Party sound truck to leave Eighth St. and Sixth Ave.. We did not have a permit. The police then remained on the scene for twenty mi nutes with their lights flashing making it impossible to continue petitioning.

Police watched ".S.L.P. organizers on and off for fifteen minute inter from 10:00 A.M. to 5:00 PM while the y were petitioning at 72nd and Broadway. The organizers involved were Susan Welsh, Larry Ravlin, Jane White and Susan H end rix. Susan has written an aff.

8/6
Tony Chaitkin's sound truck wasstopped by the police at 1:00 PM at Union Square. The organizers present were Micheal Greene, Mark Burgman, Pat ... Rotume and Stuart Rosenblatt.

On three separate occasions organizers potitioning at 181 Street and St. Ticholes Ave. were stopped from using a bullhorn by police with the following badro numbers: 216 23, 31976, 61-1623 Officer Hill, 9788 and a Sarreant 1965. The organizers involved were Linda Ray, Julia Weiner Eleine Mannheimer, Freds Ravine and Sal Ramon.

Petitioners at 34 St. and 6 Ave. were stopped from using a bullhorn on three separate occasions by the police. The organizers involved were land; forres, lave feterson and Alice Sheppard.

barre of Liebaman wasgiven a number of tickets when he brought the sound truck to 72 and Broadway where lini Ross, Lynn Greene and three others were petitioning.

Containers petitioning on both Street and Broadway were harassed through the day. Police in two separate squad cars (one car wascar 858) shown if we had a license or permit to do petitioning. It wasonly when our organizans arowed that they knew that no such permit was needed that the relice releated. Later they were asked if they had to have the limited re table in such a conspicuous place. Later a policeman asked if they estable in such a conspicuous place. Later a policeman asked if they estable in such a conspicuous place. Bater a policeman asked if they estable in Soyd, candidate for 7.5. Senate, was told that he will set a numbers if he came back. Barbars Thomas, Bed Rosinsky, Beter beneal and Fred Firetongue were petitioning from 10:30 to 5:00 PM.

Marke Aristian below, candidate for U.S. Congress in the 20th District, was areaking at a campaign rally at Union Squareone of four construction workers began harassing her. This involved name calling, finger poking and load yelling. When Christina left all four construction began harassing Mark Saba, Norman Fearl, Linda Burmar and two other organizers. One construction worker thrantened to tear up all of the leaflets lying on the literature table, se then threw a number of leaflets on the ground and a load argument ensued. As things quieted down the Tactical Police argined and had a friendly conversation with the construction workers.

con't 8/7
While Wini Ross, Peter DePaul, Peter Kastal and Eli Santia go were petiitioning at the George Washington Bridge bus terminal a policeman told
them that they could petition but not sell.

While Isaih Scott, Kathy Salet, Lee Rabinscrof, Jeff Bryant and Louise (3) were petitioning at the Dean St. Unemployment Center a policeman stopped them from using a sound car.

While Christina Nelson, candidate for U.S. Congress in the 20th District was holding a campaign rally at 86 St. and Broadway the police stated that she could not continue using the sound equipment unless the sound was lowered. Later in the day the police refused to stop a man who was harassing petitioners; Susan Hendrix, Larry Ravkin, Abbey Steinburg and two other organizers. The man followed various organizers around calling them CIA arents and laughing in a loud manner. While he was present it was impossible to gather signatures.

While selling newspapers at an unemployment center on 330 Jay St. Sal Roman was beaten by a guard at the center; during part of the beating police stood and watched the assault. A guard approached Sal and said, "You're here again talking that same shit." Thon Sal went to the bathroom. The guard followed him and beat him up in the bathroom. Sal there described the incident to another man and left to get help. Sal returned with the police at which point the guard, Orlando Martell (badge number 1737), hit Sal in the stomack in front of the policeman. The officer took Sal to an effice where the guard soon appeared and once again began physically and verbally intimidating Sal. There were now three or four policeman vatching the guard. The guard then held a bottle opener to Sal's mouth and said "I should pull all of your teeth out. Now get out of here and remember that it is your word against ours (meaning his and the police's)."

While Stuart Rosenblatt, Hardld Richardson, Jesse Khatmi and two others were petitioning at 50th St. and Laxington Avenue Stuart Rosenblatt was given a summons for using a bullhorn without a permitby C.W. Borghardt of the 17th Precinct.

Louise Goldkamp reported that while she and a number of oter organizers were petitioning at 34 St. and 7th Ave. their rally was disrupted on four separate occasions by the police. While Louise was speaking over the loudsneaker of the sound car on 34 and 7th Ave. the police asked them to move because the truck was parked in a taxi cab stand. While using the sound truck on 33 and 7 Ave. they were asked to leave by the police on three occasions, after the third incident they did leave. They then moved back to 35 st. and 7 Ave... Louise had drawn a crowd of over a hundred when they were forced to leave by the police. The policeman stated that though they had a sound permit for this location and time the permit was not for a mobils sound truck but for a stationary one. The sound truck was not moving nor had it moved for an hour but the crowd of one hundred was effectively broken up. Margaret Silver, Nacy Arnes: Feter DePaul and Susan Hendrix werealso present.

While Dave Peterson, David Wolinsky and others were petitioning at Main St.

Flüshing, Queens the police came and told Dave Peterson to stop using the bullhorn

Jerome and 170thSt. 2:00PM - Christina Nelson was told by Officer McCliN tock (badge number 29824) that she could not use athe bullhorn. The same officer had prevented organizers from using the bullhorn earlier in the day. At the same of the rally there were two squad cars, two undercover cops in a case and five foot patrolman within a two block radius.

8/8
Fordam and the Grand Concourse 3:30PM- Elijah Boyd, candidate for U.S. Senate, was stopped from using sound equipment by Officer Massic (#3431) and Officer Fowler (#8098). Roper Calvin was also present.

Ellen Byrne, Cathy Sadell, Gail Elberg, Peter DePaul, Normant Sloane and Jesse Khatomy were petitioning and using a bullhorn at St. and 6th Ave.. When they arrived at 12:00PM two policeman asked to see their permit. Upon noting that they had a permit to use sound equipment at this locatin and time the officers left. Five minutes later two other policeman asked to see their permits and said that it was for the wrong day, which was not the case. Their badge numbers were 31426 and 36448. They called the precinct and spoke to a SargeantSullivan they came back and again insisted that the permit was for the wrong date and that we needed an American flag to hold a political rally. They said that they would return later to see that we had left; they never returned. There were a number of other political and religious groups selling the R papers and talking to people: the SWP, SLP, Sparticist reague, Sunni Nuslims, Christian Science Monitor and the Puerto Rican Solidarity Day Committee. During the five and a half hours that the organizers were petitioning none of these groups were approached by the police.

Five organizers including Lorinda Lindley were harassed throughout the day while they were petitioning at Galastin and Fulton Sts. in Brooklyn At 12;00Pm a squad car from the 84th precinct came and the policeman to them that they could not use a bullhorn or a table or stand an a trash can cover. About fifteen minutes later policeman in another car stated that the three things stated above were illegal. About 25 minutes later a foot policeman told them that they could not use sound equipment. They then stopped using the sound equipment. Nonetheless the original squad car came back and told them not to use sound equipment and the second car returned to make the same warning. They were survailled by police the rest of the day.

thenny Smith was arrested for using a bullhornhat Mein St. and Roosevelt Ave. in Flushing. She was brought to the 109 precinct and given a summers for illegal use of a bullhorn, by Sargeant Emmet L. Dozier. On three occasions earlier in the day organizers had been stopped from using sound englowent by the police. Tony Vanswaren had gotten a permit on 7/26 for 7/10. F/10 had been written in red on the back of the permit; the officers contended that the permit had been filled out improperly. If this was the case the organizers contended that the clerk should be disciplined and they should be allowed to continue organizers as they had gone through the mannels.

Ross, Brian Clark, Gerry Kaulmen and two others were petitioning at

at Myrtle and Wyckoff. At 2:15PM two policemen from the 104 precinct (badge numbers 833 and 30259) threatened to give them a summons for blocking the sidewalk with a table; the table was not blocking the sidewalk. The police then stated that they needed a permit to petition.

8/11
Ted Cobb, John McCarthy Linda Lindly and three other organizers were petitioning at the Bronx Zoo. They were told by Sargeant Ganglianio (badge number 1893 of the 52 precinct) that the could not use a bull-horn and that they could not petition inside the park.

8/12 FreeporT arrests

While Gail Egberg, Alice LeBan's Christina Malisof and one other were petitioning at 34 St. and 7th ave. they were told that they had to have a permit to petition. The organizers refused to leave ans finally the police left.

At about 10:40PM Robyn Press, Jeff Briant and Lee Ravenscroft were arrested for disorderly conduct while organizing outside of the Dean St. Unemployment Center in Brooklyn. See aff.

While Tony Vanzwaren Micheal Greene and one other were petitioning at 177 St. and Broadway they were harassed by an Efficer Carr of the 34th precinct.

Linda Ray and two other organizers were petitioning at 59th St. and Lexington Ave. The organizers had a permit to use bullhorm. Linda Ray was told by Officer Harry Washburn not to stand on a garbage can, "to get off or you'll find out the hard way".

While seven organizers were petitioning at 34th St. and 7th Ave. Peter Wyer was arrested for distributing pamplets. The L.C. legal staff called the Midtown South precinct and told them that we were petting an injunction in federal court to stop such harassment and that this arrest would be used as evidence against them. Upon learning this a Sergeant Unganie came and took back the summons. However the organizers were survailled by the police for the rest of the day.

8/16
Barbara Thomas, Linda Ray and three others were petitining at 163 St. and Jamaica Ave. in Queens. At 4:30 PM a policeman whose badge number is (259(29589 told Barbara that they would be given a summons if the posters were not taken down; he also stated that they had "no right to go up and accost people on the street, if they wast the 11 come up to you." See written statement.

reported by Susan Hendrix- Art 1:30PM the security police at the Bronx Zoc spread of Will organizers and told there that they had to leave the tark grounds because it was agreent the park rules for them to petition or distribute in the park. They pressed the issue with policeran, the last being Sargeant Garaliano who called at least three precinct houses to get a judgement. Over four hours were specifically

For over four hours petitioning was disrupted while organizers argued with the police and urged them to check with higher-ups before they remarked the organizers or throw them cut. Sargeant Capaliano (\$1893) after much pressure finally spoke to Captain Perkins who said they should leave us alone till the matter had been decided on by therelice legal Department. Gagliano had thrown less insistent organizers out in the zeo last week

Elijah Boyd was given a ticket for a sound car while he Michael Colpitts Alice Shepard and Jessie Khatomy were holding a rally on 79th St. and Broadway

42 St and Sixth Ave. The police storied Wint Ross, "orman Stone, Peter DePaul from using sound equipment. A sanitation assistant (#hoh) threatened to give them a summens for handing out fliers; he also threatened to a my

23 St. and 8 Ave. - Alice LeBlanc, Isiah Scott, Becky Paciencia, norm Sloane and Lee Ravenscroft we e netitioning for blocks away from the precinct headquarters; the police passes by at a rate of two an hour. Most stated that we need a permit 'to be there; one stated that we need a needed an American flag to campaign.

Exhibit H- Armened to Amended Complaint.

Fee Receipts and Summonses.

POLICE DEPARTMENT

L. D. 75

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Exhibit H-Annexed to Amended Complaint.

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SUMMONS THE PEOPLE OF THE STATE OF NEW YORK-VS-

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Exhibit H-Annexed to Amended Complaint.

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SUMMONS

34a

CRIMINAL COURT - CITY OF NEW YORK

Failure to comply with these instructions may result in the issuance of a warrant for your arrest.

TO PLEAD GUILTY

By Mail.

If a specific fine is NOT designated on the face of this summons you may NOT plead guilty by mail and a personal appearance will be necessary. Consult the instructions under "in Person" below.

If a specific fine is distinated on the face of this summons then, within ten days after record of this summands, complete the PLEA FORM below crediting the "Calify" box to all and mail the specified fine book ther with this Lumians to the Cort and location specified on the face of this summers. Take your chron or money order payable to the Criminal Court. DO NOT MAIL CASE.

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TO PLEAD NOT CUILTY

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TO PLEAD GUILTY

By Mall:

If a specific fine is NOT designated on the face of this summons you may NOT plead guilty by mail and a personal appearance will be necessary. Consult the instructions under "in Person" below.

if a specific fine is designated on the face of this summon then, within ten days after receipt of this summons, complete the FLA FORM below checking the "Guilty" box therein and mail the specified fine together with this summons to the Court and location specified on the face of this summons. Make your check or money order payable to the Criminal Court. DO NOT MAIL CASH.

In Person:

On the date and time set for appearance you MUST appear in person or by counsel at the Court and location specified on the face of this Summons.

For New York Ilcensees: If a traffic offense is charged, your Record of Convictions (Part 2 of your Driver's License) must be presented at that time.

TO PLEAD NOT GUILTY

By Mall:

Within 48 hours after receipt of this summons complete the PLEA FORM below checking the "Not Guilty" box therein, and mail this summons to the NOT GUILTY UNIT at the Court and location specified on the face of this summons. The Court will then notify you by mail of the date to appear for trial.

In Person:

Appear in person or by counsel on the date and time set for appearance at the Court and location specified on the face of this Summons. A second court appearance will then be required at a later date for trial.

UPON APPEARING FOR ARRAIGNMENT - YOU HAVE THE RIGHT:

To the aid of counsel at your arraignment and at every subsequent state of the action.

To an adjournment for the purpose of obtaining counsel.

To have counsel assigned by the Court If you are financially unable to obtain counsel except if you are charged with a traffic infraction only.

To have a supporting deposition filed as provided in section 100.25 of the Criminal Procedure Law when the accusatory instrument filed against you is a Simplified Traffic information.

IF TRAFFIC OFFENSE OTHER THAN PARKING OR JAYWALKING IS CHARGED:

A plea of guilty to this charge is equivalent to a conviction after trial. If you are convicted, not only will you be liable to a penalty, but in addition your license to drive a motor vehicle or motor cycle, and your certificate of registration, if any, are subject to suspension and revocation as prescribed by law.

Exhibit H-Annexed to Amended Complaint

35a

SUMMONS THE PEOPLE OF THE STATE OF NEW YORK-VS-

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H-Annexed to Amended Compl

plea ofguilty ion after trial. In liable to a rive a motor ficate of regis and revocation	to this charge is equi If you are convicted penalty, but in addit vehicle or motor contration, if any, are su as prescribed by land	valent to a convic- d, not only will you tion your license to yele, and your cer- ubject to suspension w.		
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SUMMONS THE PEOPLE OF THE STATE OF NEW YORK-VS-

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CRIMINAL COURT

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Exhibit H-Annexed to Amended Complaint.

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ANT'S NAME (PRINTED)	AX REGISTR	, NO.	AGENCY	
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CRIMINAL COURT - O TY OF NEW YORK

Failure to comity with these in an	ons may result in the issuance of
TO PLEAD GUILTY	
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de d	esce of this summons then, within its, complete the PLEA FORM eln and mall the specified fine est and location specified on the x or money order payable to the
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Converses (the see your Driver's	fense is charged, your Record of cense) must be presented at that
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e sen:	
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UTT AFFEAT OF RARRAIC	TNT - YOU HAVE THE RIGHT.
To the ard of coursel anyour arra	nt and at every sub-cauent state
To an indiparement to the purpose	btaining counsel.
or the country by the country or are co	if you are financially unable to d with a traffic infraction only.
The few alsos costion to the control of the cost of th	e accusatory instrument filed formation.
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ficale of registration, if any	a subject to suspension
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PLEA A	ITIRE SUMMONS.
Control Goilton	NOT GUILTY
	STATE ZIP NO.
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TO PLEAD GUILTY

By Mall:

If a specific fine is NOT designated on the face of this summons you may NOT plead guilty by mail and a personal appearance will be necessary. Consult the instructions under "in Person" below.

If a specific fine is designated on the face of this summons then, within ten days after receipt of this summons, complete the PLEA FORM below checking the "Guilty" box therein and mail the specified fine together with this summons to the Court and location specified on the face of this summons. Make your check or money order payable to the Criminal Court. DO NOT MAIL CASH.

Person

On the date and time set for appearance you MUST appear in person of the by counsel at the Court and location specified on the face of this Summons.

For New York Ilcensess: If a traffic offense is charged, your Record of Convictions (Part 2 of your Driver's License) must be presented at that time.

TO PLEAD NOT GUILTY

By Mail:

Within 48 hours after receipt of this summons complete the PLEA FORM below checking the "Not Guilty" box therein, and mail this summons to the NOT GUILTY UNIT at the Court and location specified on the face of this summons. The Court will then notify you by mail of the date to appear for trial.

In Person:

Appear in person or by counsel on the date and time set for appearance at the Court and location specified on the face of this Summons. A second court appearance will then be required at a later date for trial.

UPON APPEARING FOR ARRAIGNMENT - YOU HAVE THE RIGHT:

To the aid of counsel at your arraignment and at every subsequent state of the action.

To an adjournment for the purpose of obtaining counsel.

To have counsel assigned by the Court if you are financially unable to obtain counsel except if you are charged with a traffic infraction only.

To have a supporting deposition filed as provided in section 100.25 of the Criminal Procedure Law when the accusatory instrument filed against you is a Simplified Traffic Information.

IF TRAFFIC OFFENSE OTHER THAN PARKING OR JAYWALKING IS CHARGED:

A plea of guilty to this charge is equivalent to a conviction after trial. If you are convicted, not only will you be liable to a penalty, but in addition your license to drive a motor vehicle or motor cycle, and your certificate of registration, if any, are subject to suspension and revocation as prescribed by law.

DO NOT	PLEA FORM	TIRE SUMMO	ons.	
I hereby plead	GUILTY		NOT GUILT	4
NAME (Print)				
ADDRESS				
CITY		STATE	ZIP NO.	
SIGNATURE		DA	re ·	

Exhibit H-Annexed to Amended Complaint

388

SUMMONS NOTICE OF VIOLATION

LAST NAME FIRST NAME INITIAL STREET ADDRESS CITY (as shown on license) STATE ZIP NO LICENSE OR IDENTIFICATION NUMBER TYPE OF LICENSE OF BIRTH | TES | NO THE OPERATOR OR REGISTERED OWNER OF VEHICLE DESCRIBED BELOW PLATE TYPE MAKE OF VEHICLE COLOR THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS COUNTY DATE MAM IN VIOLATION OF DPM SECTION SUBD. TRAFFIC LAW PARKING ---CODE YOU MUST ACT WITHIN 7 DAYS TO PAY FINE: Check guilty on the Plea Form (back of summons, bottom middle) Mailthis summons within 7 days with a checkor money order for the amount checked below to: rkthe Violations Bureau Write the summons number and plate number on the front of your check or money order TO PLE AD NOT GUILTY OR GUILTY WITH AN EXPLANATION See back of summons SCHEDULED FINE OTHER Failure to plead on time may cause additional penalties up to \$25 and may lead to a default judgment. I PERSONALLY DESERVED THE COMMISSION OF THE OFFENSE CHARGED ABOVE. AFFIRMED UNCER PENALTY OF PERJURY ON DATE OF OFFENSE. HANK SIGNATURE OF COMPLAINANT SQUAD COMMAND COMPLAINANT'S NAME IPRINTED TAX REGISTRY NO AGENCY

DEPARTMENT OF MOTOR VEHICLES ADMINISTRATIVE ADJUDICATION BUREAU

TO PLEAD GUILTY

- . Read Notice printed in red on face of this Summons.
- . See Fine Schedule below to determine amount of your fine.
- . Complete the Plea Form below and check "Guilty" box.
- Mall your check or money order in the appropriate amount, payable to Department of Motor Vehicles, within 10 days, together with this Summons and your Record of Convictions (Part 2 of your briving License) to the Mailing Address below. DO NOT SEND EACH.

 Bring this Summons and your Record of Convictions (Part 2 of your Driver's License) to any of the hearing office locations listed below, on or before date of appearance.

FINE SCHEDULE FOR GUILTY PLEAS

SPEEDING

Inspection or Equipment Violation \$15

1 - 14 MPH over limit \$25 15 - 24 MPH over limit \$35

All Other Offenses \$25

25 MPH or more over limit - personal appearance required

TO PLEAD GUILTY WITH EXPLANATION

- Read notice printed in red on face of this Summons.
- Bring this Summons and your Record of Convictions (Part 2 of Julia Driver's License) to any of the hearing office locations listed below, a trabefore date of appearance.

TO PLEAD NOT GUILTY

- · Complete the Plea Form below and check "Not Guilt;" LUA.
- Send this Summons to the Mailing Address below within 10 u. .

OR

- Enter your "Not Guilty" plea in person within 10 days at any of the hearing office locations listed below.
- Your hearing will be on the <u>Date of Appearance and at the time that its</u>
 on the face of this Summons, at the hearing office location in the recent, In which the Summons was issued.

HEARING OFFICE LOCATIONS:

Bronx 2455 Sedgwick Ave. Brooklyn

(.lanhallan 50 fast coth t

Queens

350 Livingston St.

for tunend 60 Bay Street

1 Lefrak City Plaza (Junction Blvd. & Long Island Expressway)

Daytime hows are Monday through Friday 8:30 A.M. to 4:00 P.A. Evening hours are Thursday

4:00 P.M. to 7:30 1: 61

MAILING ADDRESS

Administrative Adjudication - Plea Unit Department of Motor Vehicles

The South Mall

Albany, New York 12228

Rules and regulations of the Administrative Adjudication Bureau ma, be nspected at any of the above offices.

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SUMMONS THE PEOPLE OF THE STATE OF NEW YORK-VS-

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DATE OF APP						9 A.M.
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RANK/SIGNATU	RE OF COMPLAIN	ANT	-		SGUAD	COMMAND
COMPLAINANT	S NAME (PRINTE	01		TAX RE	GISTRY NO.	AGENCY

CRIMINAL COURT

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SUMMONS

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STREET ADDRESS					
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TO PLEAD NOT	MMONS	GUILTY	WITH AN	EXPLA	NATION
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Exhibit H-Annexed to Amended Complaint.

RANK/SIGNATURE OF COMPLAINANT

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(as shown	on license)				STAT	E				ZIP NO.
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PLAINANT'S	NAME (PRIN	TEDI		П	TAX	REGIS	TRY NO	D	AG	ENCY

CRIMINAL COLLET

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CRIM'NAL COURT - CITY OF NEW YORK

Failure to comply with these instructions may result in the Issuance of a warrant for your arrest.

TO PLEAD GUILTY

By Mail:

If a modific fine is NOT designated on the face of this summons you may NOT pied guilty by mail and a personal appearance will be necessary. Consult the instructions under "in Person' below.

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If a specific fine is designated on the face of this summons then, within ten days after receipt of this summons, complete the PLEA FORM below checking the "Guilty" box therein and mail the specified fine together with this summons to the Court and location specified on the face of this summons. Make your check or money order payable to the Criminal Court. DO NOT MAIL CASH.

In Person

On the date and time set for appearance you MUST appear in person or by coursel at the Court and location specified on the face of this summons.

For New York licensees: If a traffic offense is charged, your Record of Convictions (Part 2 of your Driver's License) must be presented at that time.

TO PLEAD NOT GUILTY

By Mall:

Within 48 hours after receipt of this summons complete the PLEA FORM below checking the "Not Guilty" box therein, and mail this summons to the NOT GUILTY UNIT at the Court and location specified on the face of this summons. The Court will then notify you by mail of the date to appear for trial.

In Person:

Appear in person or by counsel on the date and time set for appearance at the Court and location specified on the face of this Summons. A second court appearance will then be required at a later date for trial.

UPON APPEARING FOR ARRAIGNMENT - YOU HAVE THE RIGHT:

To the aid of counsel at your arraignment and at every subsequent state of the action.

To an adjournment for the purpose of obtaining counsel.

To have counsel assigned by the Court if you are financially unable to obtain counsel except if you are charged with a traffic infraction only.

To have a supporting deposition filed as provided in section 100.25 of the Criminal Procedure Law when the accusatory instrument filed against you is a Simplified Traffic Information.

IF TRAFFIC OFFENSE OTHER THAN PARKING OR JAYWALKING IS CHARGED:

A plea of guilty to this charge is equivalent to a conviction after trial. If you are convicted, not only will you be liable to a penalty, but in addition your license to drive a motor vehicle or motor cycle, and your certificate of registration, if any, are subject to suspension and revocation as prescribed by law.

DO NOT	PLEA FORM	RE SUMMONS.
I hereby plead	GUILTY	NOT GUILTY
ADDRESS EMIL	y Weiner	
CITY NIC		STATE ZIP NO.
SIGNATURE	4. The	DATE

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specific fine is designated on the face of this summons then, within they's after receipt of this summons, complete the PLEA FORM the checking the "Guilty" box therein and mail the specified fine they with this summons to the Court and location specified on the fithis summons. Make your check or money order payable to the milital Court. DO NOT MAIL CASH.

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Bhin 48 hours after receipt of this summons complete the PLEA FORM the checking the "Not Gulity" box therein, and mail this summons the NOT GUILTY UNIT at the Court and location specified on the court its summons. The Court will then notify you by mail of the design of the location appear for trial.

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ONLY PPEARING FOR ARRAIGNMENT - YOU HAVE THE RIGHT:

the aid of counsel at your arraignment and at every subsequent state the action.

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a supporting deposition filed as provided in section 100.25 of lininal Procedure Law when the accusatory instrument filed you is a Simplified Traffic Information.

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DEPARTMENT OF MOTOR VEHICLES -ADMINISTRATIVE . JUDICATION PUREAU

TO	-	EA	n	CIL	111	TV
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- · Read Notice printed in red on face of this Summons.
- . See Fine Schedule below to determine amount of your fine.
- . Complete the "lea Form below and check "Guilty" box.
- Mail your check or money orde in the appropriate amount, dayable to Department of Motor Vehicles within 10 days, together with this Summons and your Record of Convictions (Pari 2 of your Driver's License) to the Mailing Address below.
- Bring this Summons and your fracord of Convetions (Part 2 of your Driver's License) to any of the pearing office locations listed below, on or before date of appearance.

FINE SCHEDULE FOR GUILTY PLEAS

SPEEDING

Inspection or Equipment Violation \$15

1 - 14 MPH over limit \$25

All Other Offenses \$25

15 - 24 MPH over limit \$35

25 MPH or more over limit - personal appearance required.

TO PLEAD GUILTY WITH EXPLANATION

- · Read notice printed in red on face of this Summons.
- . Bring this Summons and your Record of Convictions (P. .t 2 of your Driver's License) to any of the nearing office locations listed below, on or before date of appearance.

TO PLEAD NOT GUILTY

- . Complete the Plea Form below . . : check "Not Guilty" box.
- · Send this Summons to the Mailing Eddress below within 10 days.

RG

- . Enter your "Not Guilty" ples a person within 10 days at any of the hearing office locations listed borow.
- . Your hearing will be on the Date of Appearance and at the time indicated on the face of this Summons, at the hearing office ocation in the county In which the Summons was Issued.

HEARING OFFICE LOCATIONS:

Bronx 2455 Selgwick Ave.

Brooklyn 350 Livingston St. Manhattan

Queens

50 East Ceth St

1 Lefrak City Plaza

(Junction Blvd. & Long Island Expressway)

Richmond 60 Pay Street

Daytime hours are Monday through Friday 8:30 A. A. to 4:00 P.M.

Evening hours are Thursday 4:00 P.M. to 7:30 -. N

MAIL! ADDITE

Administrative of Judication - fire Unit Decariment of for Venicles

The South Ma. Albany, New York 12228

Rules and regulations of the Administrative Adjudit from Bu

	PLEA FORM		DATED TON
I, the undersigned, pleud	GUILTY	710	OT GUILTY
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CITY		STATE	ZIP NO
SIGNATURE		DATE	

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CURRENCE - wi . VIOLATION OF TRAFFIC IAM

FAIL TO ANSWER THIS SUMMONS BY THE DATE OF EARANCE, YOUR LICENSE WILL BE SUSPENDED.

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of guilty to this charge is equivalent to a convicter trial. If you are convicted, not only will you ble to a penalty, but in addition your license to a motor vehicle or motor cycle, and your cerof registration, if any, are subject to suspension evocation as prescribed by law.

The person described above is summoned to appear at N.Y.S. - DEPARTMENT OF MOTOR VEHICLES ADMINISTRATIVE ADJUDICATION BUREAU Located in the County where the summons was issued.

OFFICE ADDRESSES ON REVERSE.

PEARANCE

T'S NAME (PRINTED)

ALLY OBSERVED THE COMMISSION OF THE OFFENSE CHARGED ABOVE. AFFIRMLE WALTY OF PERJURY ON DATE OF OFFENSE. TURE OF COMPLAINANT SOUAD COMMAND

TAX REGISTRY NO

AGENCY

FOLLOW INSTRUCTIONS ON REVERSE SIDE

PT. OF MOTOR VEHICLES ADMINISTRATIVE ADJUDICATION BUR.

43a

Answer.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

DEFENDANT MICHAEL J. CODD ANSWERING PLAINTIFFS' FIRST AMENDED COMPLAINT:

Denies knowledge or information sufficient to form a belief as to each and every allegation contained in: the *Preliminary Statement, Parties*, paragraphs one, two and eight of the first amended complaint. The court is respectfully referred to plaintiffs' exhibit "A" for whatever legal value it may have.

- 2. Denies each and every allegation contained in paragraph three of the first amended complaint.
- 3. Denies each and every allegation contained in paragraph four of the first amended complaint.
- 4. Denies each and every allegation contained in paragraph five of the first amended complaint. The Court is respectfully referred to exhibit "G" for whatever legal value it may have.
- 5. Denies each and every allegation contained in paragraph six of the first amended complaint. The Court is respectfully referred to plaintiffs' exhibits "B", "C", and "G" for whatever legal value they may have.
- 6. Denies each and every allegation contained in paragraph seven of the first amended complaint. The Court is respectfully referred to plaintiffs' exhibits "A" and "G" for whatever their legal value.
- 7. Denies each and every allegation contained in paragraphs nine, ten and eleven of the first amended complaint.

Answer.

8. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs twelve, thirteen and fourteen of the first amended complaint.

FURTHER ANSWERING THE FIRST AMENDED COMPLAINT AND AS A COMPLETE AND SEPARATE DEFENSE THERETO, THE DEFENDANT MICHAEL J. CODD ALLEGES:

- 9. Section 435(6) of the Administrative Code of New York City is constitutional and is a valid exercise of the police power.
- 10. The defendant has applied section 435(6) without discrimination.
- 11. The defendant has not harassed, annoyed, or otherwise interfered with any action in which plaintiffs seek to engage lawfully.
- 12. The first amended complaint does not state a valid cause of action against the defendant. It does not set forth facts to show defendant had knowledge or condoned the alleged wrongful acts of his subordinates nor, in fact, did he have knowledge of wrongful acts, if any, of his subordinates.
- 13. When defendant did learn of the allegations in the complaint, he took preventative action against possible wrongdoing as noted in defendants' exhibit I attached hereto and incorporated by reference herein.

Dated: Sept. 9, 1974.

Respectfully submitted,

Adrian P. Burke Corporation Counsel by Thomas Lawson Assistant Corporation Counsel

Exhibit 1-Annexed to Answer.

STATE OF NEW YORK) COUNTY OF NEW YORK)	
TO WHOM IT MAY CONCERN:	Affidavit In Opposition To Injunctive Relief
	: Index No. : 74 Civ. 1190

I. MATTHEW L. BYRNE, the undersigned, being the Director of the Legal Division of the Police Department of the City of New York, do hereby attest and certify that I have compared the attached Xerox copy of the teletype order transmitted to all commands on August 15, 1974 with the original filed in the Communications Unit of this Department and the same is a true and correct copy thereof.

Sworn to before me this 11 date of linguest, 1974

Exhibit 1-Annexed to Answer.

Affidavit of Matthew L. Byrne in Opposition to Injunctive Relief and Attachment

TO ALL COMMANDS:

AUGUST 15, 1974

IN CONNECTION WITH THE FORTHCOMING ELECTIONS, MEMBERS OF POLITICAL PARTIES WILL BE GATHERING AND SOLICITING SIGNATURES ON NOMINATING PETITIONS. IN SUCH INSTANCES, MEMBERS OF THE SERVICE WILL IMMEDIATELY CONSULT WITH A SUPERIOR OFFICER PRIOR TO TAKING ANY ACTION AGAINST MEMBERS OF ANY POLITICAL PARTY WHO ARE LAWFULLY ENGAGED IN SUCH

NO SUCH PRIOR CONSULTATION SHALL BE REQUIRED WHEN A CRIME OR VIOLATION IS BEING COMMITTED AND CIRCUMSTANCES REQUIRE IMMEDIATE ACTION.

TO BE READ AT 14 CONSECUTIVE ROLL CALLS.

AUTH: CHIEF OF OPERATIONS

MARTIN 1900 HRS

1	Transcript, dated August 15, 1974.
2	UNITED STATES DISTRICT COURT
3	EASTERN DISTRICT OF NEW YORK
4	х
5	U.S. LABOR PARTY, et al., :
6	Plaintiffs, : 74-C-1190
7	-against-
8	MICHAEL J. CODD, et al., :
9	Defendants. :
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11	
12	United States Courthouse Brooklyn, New York
13	BLOOKIYH, NEW TOLK
14	August 15, 1974 3:00 o'clock P.M.
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16	Before:
17	HONORABLE JACK B. WEINSTEIN, U.S.D.J.
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22	
23	HENRI LEGENDRE
24	ACTING OFFICIAL COURT REPORTER
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Appearances:

JAY CARLISLE, ESO. Attorney for Plaintiffs

ADRIAN P. BURKE, ESO.
Corporation Counsel
Attorney for Defendant
BY: THOMAS LAWSON, ESQ.
Of Counsel

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THE COURT: The case against the Village of Preeport has been dismissed with prejudice on the assumption that the parties will be able to enter into a stipulation which has already been mentioned.

With respect to the action against the City of
New York and a number of its officials, the parties
have stipulated that the Telex to the various members
of the Police Department, reaffirming a constitutional
policy of the Department that the political rights of
the plaintiff are not to be intrifered with, has apparently proven satisfactory since it was issued last week.

In view of that it is unnecessary at this time to make any findings or to provide for any preliminary injunction with respect to the claims of harassment.

by at least some of the police officers with respect
to the nature of the permit required. The Police Department will bring to the attention of its officers as
soon as possible the fact that a permit can be obtained
which covers more than one precinct, and that it applies
for an entire day at as many locations as desired, providing they are acceptable locations with respect to each
piece of equipment.

The only matter remaining before the Court today is the question of payment for these permits. The Court

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finds that the plaintiff during the period from now until
the termination of the signature-gathering period on
September 13 will be required to spend approximately
\$1,000 for permits. The Court further finds for the
purposes of this hearing and not for any final judgment
that the plaintiff lacks funds and lacks any possible
sources of funds to acquire this \$1,000. The requirement that they pay the \$1,000 will seriously interfere
with their attempt to obtain the necessary petitions to
go on to the ballot for the 1974 election to be held in
November.

There is a substantial probability that the plaintiffs can on the basis of the record made to date sustain these findings of fact. The Court takes judicial notice of the fact that most candidates running for major parties are financially better able to pay these fees than are members of a relatively small and unknown party, such as United States Labor Party and the National Caucus Labor Committee. Certainly, candidates such as Elijah Cunningham Royd have substantially fewer assets than major candidates for the office that he seeks to run for.

Under the circumstances there is a very serious question with respect to the validity of the laws requiring payment of these fees. Although they may seem

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24 25 insubstantial, to a poor and unknown party they can be an effective deterrent to the mounting of any effective campaign in view of the State requirements of such a substantial number of signatures.

The Court is bound by the cases under the Constitution which places great emphasis on the importance of any matters concerned with voting. In Yick Wo v. Hopkins, 118 U.S. 356 at 1370, 6 S.Ct. 1064 at 1071 (1886), the Supreme Court noted that "The . . . political franchise of voting" is critical to our system. ". . . it is regarded as a fundamental political right, because preservative of all rights." This concept was relied on very heavily in the reapportionment cases and many other recent cases. The Supreme Court has reaffirmed this position recently in Reynolds v. Sims, 377 U. S. 533 at 563, 84 S. Ct. 1362 at 1381 (1964). The Court pointed out that the ". . . right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of the citizens to vote must be carefully and meticulously scrutinized."

Of course, the right to vote is correlative with the right to run for office and to bring matters to the

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attention of the voters. If the voters are not given a free and open opportunity, the right to vote is really not of much use. The Russian system of a single candidate where people can vote yes or no or the Nazi system of like import protects the right of franchise, but it is a right without any meaning which does not belong in this country.

Recently in Lubin v. Panish, 94 S. Ct. 1315 at 1320 (1974), speaking of filing fees, the Court noted: "Filing fees, however large, do not, in and of themselves, test the genuineness of a candidacy or the extent of the voters' support of an aspirant for public office . . . A wealthy candidate with not the remotest chance of election may secure a place on the ballot by writing a check . . . We have also noted that prohibitive filing fees . . . exclude serious candidates. Conversely, if the filing fee is more moderate, as here, impecunious but serious candidates may be prevented from running. Even in this day of high budget political campaigns some candidates have demonstrated that direct contact with thousands of voters 'walking tours' is a route to success. Whatever may be the political mood at any given time, our tradition has been one of hospitality without regard to their economic status."

The issues which we are dealing with are very

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complex. The fact that both in the state legislature and in the national legislature men and women of good will are experiencing difficulty in finding the method of paying for campaigns that doesn't give too much power to the wealthy indicates the complexity of the issue of the question before us.

Were the issue one of whether everyone is entitled to access to newspapers, the Court would have to decide based upon recent cases and decisions in the United States Supreme Court such as the Florida case, that access is not required. To some extent, equal access provisions do provide some equalization with respect to television and radio, although we all know that a great deal of money is required for such commercial appearances. In this case, the fee is being charged by an agency of the Government, to wit, the City of New York, through the licensing division of the Police Department under the direction of Michael J. Codil as Commissioner of Police of the City of New York. This Court finds that for the purposes of this decision the effect of that fee requirement is to substantially inhibit the plaintiffs from making an effective appeal to the public and from obtaining necessary signatures on petitions which will enable their candidates to run this year.

Department shall issue, without charge to the plaintiffs, up to ten permits for sound equipment per se to be applied for in the regular manner without payment of fees. A record shall be kept of all such applications and issuances and, should the plaintiff lose the case ultimately, the Court will consider making the United States Labor Party, also known as the National Caucus Labor Committees, responsible for the payment of such sums.

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The Court has considered requiring a bond but since these organizations appear to be without substantial funds requiring a bond would be in effect to take away what the Court has just given in the way of a preliminary remedy. These permits shall not be required to be issued without payment of fees after the September 13 end of this period.

as the plaintiffs should consider how it might be possible to provide for a method of meeting the problem of impecunious or near-impecunious petitioners for such permits when the usage is intended for First Amendment purposes. It would be difficult to draft adequate regulations which do not have the harmful effect of prying too deeply into the financial resources and membership

of the party seeking such permit. We certainly don't want to get involved in the kind of position that the Supreme Court found objectionable in NAACP v. Alabama.

The parties shall submit an order forthwith so that an appeal can be taken. I think an appeal can probably be taken, probably from this oral opinion without any further order, don't you think?

MR. LAWSON: I think we should submit an order.

I'm not sure how this is going to affect the administration in the Police Department. It might be very complex.

THE COURT: See if you can work out an order together.

MR. NECO: As to this specific plaintiff insofar as the issuing of other candidates, or any other organizations --

That's all I can deal with. I realize that part of the problem is that it may give this political party a slight edge over others, but it seems to me that it's of such slight importance in view of the nature of this party and its candidates, and the low probability of their winning any general election at this stage. I don't think it's a serious problem but in the long run that could be a substantial matter that we'll have to consider. I realize that this decision may have far-

reaching implications, and if the plaintiffs are going to go forward in the fall with it on a more extensive basis, it will have to be thoroughly briefed and the preparation of the facts will have to be a great deal more thoroughly briefed and the preparation of the facts will have to be a great deal more thoroughly briefed and the preparation of the facts will have to be a great deal more thoroughly handled — I don't say that critically. The attorneys on both sides have been very good.

MR. LAWSON: Is it my understanding this does not affect any other regulation with regard to permits or any of the parties, it just goes to the ten permits per day?

THE COURT: Yes.

MR. LAWSON: Can we consider that a final order?

If we wish to appeal from that we can.

THE COURT: It's an appealable order because it's an injunction, but it's not final because we haven't had a full development of the facts or the law. We are doing this on an emergency basis. I came in from vacation this morning and had been reading your papers while I'm holding the hearing.

MR. NECO: On behalf of the Police Commissioner and the Police Department, may I speak for the record that -- of course -- we find this order -- we will seek an appeal, but as far as a portion of your decision

58a 1 2 fee --3 4 5 draws that portion? 6 7 less you want to. 8 9 10 11 12 13 14 15 and law. You want a stay until when? 16 17 THE COURT: What time? 18 MR. LAWSON: 2:00 o'clock. 19 20 21 22 23 24 25 stay this order, they may well stay it.

regarding other candidates or parties and the license THE COURT: All right, I'll withdraw that. MR. NECO: Do I understand that your Honor with-THE COURT: You needn't confer with anybody un-Now, how shall we handle it? Do you want to get up an order? You can consult on that. I think you can agree on the form and get it out to me and I'll sign it. We ought to move speedily. It's now a quarter to 3:00. MR. LAWSON: We will simply take the order and it stands, and we'll appeal from this order. THE COURT: That constitutes my finding of fact MR. LAWSON: We have until the day after tomorrow.

THE COURT: Stayed until August 22nd at 2:00 o'clock. If you want me you have my home phone.

MR. CARLISLE: The plaintiffs understand on August 22nd after 2:00 o'clock they will be able to obtain the ten permits without paying a fee.

THE COURT: Assuming the Court of Appeals doesn't

Thank you very much.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Sugar.

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J.C. CARLISLE, ESQ. Attorney for Defendant

W. BERNARD RICHLAND, ESQ. Corp. Counsel City of New York By: WILLIAM P. DE WITT, ESQ. A.C.C.

PAUL BRENNER, ESQ. Attorney New York City Police Dept.

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THE COURT: Call your witnesses, please.

MR. DE WIIT: Before I call my witness there are some stipulations we would like to make for the record.

MR. CARLISLE: It is hereby stipulated and agreed upon between counsel for the plaintiff and defendant that plaintiff will voluntarily withdraw all parts of its complaint without prejudice other than that allegation in the complaint which challenges the five dollar permit fee, Section 345-6.0 of the Administrative Code of the City of New York.

(f) (h) as a constitutionally impermissible flat tax upon the plaintiff's First Amendment rights to free speech.

MR. DE WITT: Your Honor, we have also stipulated that initially the burden is on the defendants to show that the five-dollar fee is reasonable, reasonably related to the cost of administrating the program. To that end I call Mr. William Quigley.

ı	Quigley - direct 4
2	WILLIAM QUIGLEY, called as a witness,
3	having been first duly sworn by the Clerk of the
	Court, testified as follows:
	DIRECT EXAMINATION
	BY MR. DE WITT:
	Q Mr. Quigley, are you employed?

I am an administrative manager with the License Division of the New York City Police Department.

Q Are you a civilian employee?

Yes, sir, I am.

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At what location do you work?

One Police Plaza, Police Headquarters.

Are you familiar with the procedures whereby sound permits are issued under 435-6.0 of the Administrative Code of the City of New York?

Yes, I am.

MR. DE WITT: At this time I would like to read into the record pertinent portions of 435-6.0 as they apply to the issue of fees.

THE COURT: It is not necessary to read them in. I have them before me.

Mr. Quigley, what is the first thing an

applicant must do to secure a permit under 435-6.0?

A Well, an applicant could go to the precinct that

covered the geographical area in which the sound device apparatus was going to be used and make an application.

The application would be on a form that would ask the name and address of the person seeking the permit, the location, the time it would be held, the purpose for it and the number of feet that the sound apparatus would carry volume.

Q Are you familiar with the procedures used in the precinct houses?

A Yes, I am.

Q How did you become familiar with these procedures?

A In September and after that date I conducted a survey for Deputy Inspector Peter Malony, Commanding Officer of the License Division of the Sound Device Procedures.

Q Would you repeat the date again, Mr. Quigley?
September 1974.

Q Would you say that the procedures used in the precinct houses you visited are typical of those throughout the city precinct houses?

A Yes, I would.

Q Mr. Quigley, could you identify this for me,

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A This is an application to secure the permit to use the sound apparatus.

MR. DE WITT: I would like at this time to offer in evidence this as Defendant's Exhibit 1.

THE COURT: Any objection?

MR. CARLISLE: No objection.

THE COURT CLERK: Paper marked

Defendant's Exhibit 1 in evidence.

(So marked.)

Q Mr. Quigley, who prints these forms?

A The Police Department printing section.

Q How do all the precinct houses get them?

A They requisition them from the Department store house.

Q The creation of this form is completely internal?

A Yes, sir.

Q Can this form be used for purposes other than requesting sound device permits?

A No, sir, it cannot.

Q Mr. Quigley, when an application is submitted to the precinct house is an investigation made or review conducted?

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A Yes, sir. After the application is submitted usually someone on the clerical staff notifies the immediate supervisory commander that an event is about to occur within a certain geographical area to alert themselves and in the precinct they assign a police officer to visit the area to determine if there would be any reason why the event should not be, the apparatus should not be used for this particular purpose.

Q Is the report in writing, is a report in writing made?

A Yes, a report in writing is submitted to the investigating officer.

Q Mr. Quigley, can you identify this piece of paper?

A This is a UF 49 letterhead form from the Commanding Officer of the Fifth Precinct which summarizes the investigation on an application for a sound device permit that was just offered in evidence.

MR. DE WITT: Thank you. At this time I would like to offer this as a defendant's exhibit.

THE COURT: Any objection?

MR. CARLISLE: No objection.

THE CLERK: Defendant's Exhibit 2 in

evidence.

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(So marked.)

- Ω Mr. Quigley, would you say that this report is typical of the reports issued at precinct houses?
- A Yes, it is.
- Q Is it typical of a report if the sound device application is recommended to be disapproved?
- A Nc, it would not be.
 - Q In what respect would it differ?
- A Where a disapproval would be recommended for reasons it would require more amplification.
- Q In other words, there is more clerical work and typing?
- A More clerical work.
 - Q Is the fee collected at the precinct house?
- 17 A A five dollar fee is collected.
- 18 Q Is a receipt issued for the fee?
- A A receipt is issued and a notation is made on the application.
 - Q I show you a piece of paper, a Xerox copy, can you identify it for me?
- 23 A Yes, this is a Police Department receipt.

MR. DE WITT: I offer this as

Defendant's Exhibit 3.

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THE COURT: Any objection?

MR. CARLISLE: No objection.

THE CLERK: Defendant's Exhibit 3

marked in evidence.

- Mr. Quigley, who prepares the application report and the receipt for the fee at the precinct?
- Initially the person seeking the permit fills out the application form and then it goes to the clerical office where it is typed. The notification is made by telephone to the area commander, supervisor at the precinct and the transmittal form also is prepared depending on the regults of the investigation that is being conducted, whether it should be approved or disapproved.
- Q Does this complete the proceeding of the application at the precinct house?
- At the precinct house it does.
- What happens to the forms after they are completed at the precinct house?
- Forwarded first to the area commander ar from there to the License Division at my headquarters.
 - Q Is a letter of transmittal prepared?
- A Yes, sir.
 - Q Essentially the same as Defendant's Exhibit 3?
- A Yes, sir.

Q Does the precinct ever issue a permit by itself?

In an exceptional case when the License Division might be closed or in the event maybe of such sudden occurrence or important nature that the ordinary period of five days could not be given for the precinct to issue it, it will accept the license fee, issue a UF 49 in lieu of the certificate and notify the License Division as soon as it was open. Of course they would notify the immediate commander as well of the action they had taken.

Q Assuming the precinct house issues the permit itself are the application forms and transmittal letter and fee receipt nevertheless sent on to police headquarters?

A Yes, they are.

Q What happens when the papers from the precinct are received at headquarters, at the licensing division?

A They are processed in the normal manner required by law and then marked canceled and filed.

Q What happens with applications received by the License Division for which no permit has yet been issued?

A Well they have the procedure of - - well, the document has a number on it, they check to see that the transmittal form from the Division of Audit and Accounts which is a

separate unit which is responsible for accepting fees as come through showing that the fee has been received by them and - -

Q I show you this piece of paper. Is this the piece of paper sent to the Department of Audits and Accounts showing the fee has been received?

A This is the Police Department transmittal form to the Audits and Accounts Department for fees.

MR. DE WITT: I offer this in evidence.

MR. CARLISLE: No objection.

THE COURT: Mark it.

THE CLERK: Defendant's Exhibit 4

marked in evidence.

(So marked.)

Q Mr. Quigley, after the papers are lodged in the License Division what happens then?

A One of the clerks assigned to the function has to prepare the actual license document itself and be sure it is transmitted and that its copies are filed and that the Controller's Office receives a copy at the end of the month with the monthly report showing what actually has transpired.

Q What happens if the papers that you receive are not in proper form or otherwise out of order?

1	Quigity direct
2	A Well, then the clerk handling that particular
3	function would have to contact the precinct where the
4	application had been made to get some particular clarification
5	on it.
6	Q How does the clarification come through?
7	A Well initially it would be by telephone rather than
8	delay unduly the issuance of the certificate and later it
9	would be confirmed by a written report.
10	Q How many applications would you say are in
11	order?
12	A I would say about 90% of them.
13	Q So approximately 10% require checkback to
14	the precinct house?
15	A Yes.
16	Q Is an application ever delayed because it
17	is not submitted in proper form?
18	A No.
19	Q Mr. Quigley, how many full-time people do
20	you have in the License Division who process these
21	applications?
22	A We have two civilian clerks.
23	Q These are not members of the Department?
	These are members of the Department but they are

not members of the uniformed service.

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I see. They do nothing else but process

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applications?

That is right, that is their particular function.

MR. CARLISLE: I object to that question unless he clarifies whether he is referring to these applications or general applications for licenses.

THE WITNESS: They handle sound device permits exclusively at their particular section.

Q After the clerical procedures involved at the licensing division is there anything else that happens before the permit is sent out?

A No, that is it. At that point it is transmitted to the precinct and the precinct would issue it.

Q The area commander, is he informed in any way the license has been approved?

A No, he would not be informed it has been approved.

The precinct would be responsible for any particular additional follow-up they felt he might require, if he asked about it he would be normally informed by them.

Q Mr. Quigley, can you identify these two pieces of paper?

A This pink sheet is a transmittal form for licenses

Quigley - direct

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as Exhibit 5?

MR. DE WITT: May we have it marked

MR. CARLISLE: No objection.

MR. DE WITT: Just the pink sheet.

THE CLERK: Defendant's Exhibit 5

marked in evidence.

(So marked.)

that are issued by the License Division.

Can you identify those remaining pieces of paper you have?

This is a sound device permit issued by the Police Department.

That is the actual permit itself?

Yes.

MR. DE WITT: May we have this marked

Defendant's Exhibit 6?

THE CLERK: Defendant's Exhibit 6

marked in evidence.

(So marked.)

Mr. Quigley, what procedures are involved if the License Division at headquarters disapproves an application?

Well the disapproval recommendations might originate at the precinct and/or the area commander level and then be

reported to the License Division. They might occur if
the person seeking the permit was to use the apparatus
after hours or near a court or school, a hospital or any
of the usual reasons for not issuing specified within the law.

If it involved a unique situation, one that might require
some bit of judgment, it might be referred directly to the
License Division for some kind of advice on the issuance of
the permit.

Q Is anyone charged with getting in touch with the sponsor of the event where the license has been disapproved?

A Yes, the precinct would get in touch with the sponsor of the event and see if they could offer him an alternate site in the immediate vicinity, if possible.

O If he disapproves the alternate sites

offered by the precinct does he have anyplace to go?

A He could appeal. If he felt that the Police

Department denial was not based, you know, in fact on something in the law he could appeal it to the Police Commissioner.

Mr. Quigley, are all these steps necessary to process a form to conform with the applicable rules and regulations?

A They are as indicated in the law.

Q Does this complete the clerical processing

of an application from the final submitting, from the time the permit itself is sent back to the precinct house?

A Except for the step of filing the application forms at the License Division and eventually the paper work at the precinct.

Q Could you explain what is involved at the License Division?

A Well, the filing would be a routine sort of situation.

Once everything else has been checked and has been sent out
the file clerk would normally put them in order within the
precinct folder and that would provide a record for any
future inquiries that might come out.

Q What occurs at the precinct house?

The precinct normally would pull the paper work, the file copies of their initial paper work and attach anything they felt they had to. For instance, after the function had been completed they would naturally get the certificate back normally and they would have to make a notation on it and send it back to the License Division for filing with us. We normally receive back the certificate after the event has occurred.

Q I see. Does this complete the steps involved in the processing of an application?

A Yes, it does.

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Have you ever made a study to determine the cost of processing one application for the use of sound device?

Yes, sir.

Q Was this study made expressly for this lawsuit?

No, it was not.

For what purpose was it made?

The Bureau of the Budget in December of 1974 as part of a general move to bring costs of issuing license permits and services more in line with the fees that were being charged instructed all departments in the city that had any kind of licensing function to analyze the steps that had been gone through and using their particular instructions to give a cross-breakdown.

Mr. Quigley, can you identify this piece of paper?

This is the report form prepared by the Police Department and submitted to the Bureau of Budget indicating the cost factors involved in processing the sound device permits.

MR. DE WITT: May we have this marked?

THE COURT: Any objection?

MR. CARLISLE: May I see it?

No objection.

involved in processing one application. Does that report

What is that figure?

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establish a figure?

Yes.

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A	The	figure	we	arrived	at,	you	mean?
	THE	rigure	we	arrived	at,	you	meanr

- Q Yes, the final figure.
- A The final figure would reflect \$9.62 cost for processing each application.
- Q That report indicates \$5.62 as the total cost for processing an application, yet the pertinent provisions of the Administrative Code requires a fee of only \$5.00. That is \$4.62 less than the cost of processing applications, is that right?
- A Yes, sir.
 - Q How long has the \$5.00 figure en required?
- A 1948.
 - Q And the law has not been changed since 1948?
- A No, sir.

MR. DE WITT: Your Honor, at this
time I am going to ask the Court to take
judicial notice of the fact that the City
of New York is in serious financial difficulty
and the possibility exists it is not going
to be able to meet its payroll February 28,
1975, of which I am a hopeful beneficiary.

THE COURT: I will certainly take that into account.

MR. DE WITT: Thank you very much,

We have no further questions of

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your Honoz.

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this witness. THE COURT: We will take a short

break. I have two criminal matters, if you do not mind.

> (Whereupon, a recess was taken.) (After recess.)

THE COURT: Of course, this has not included all the auditing functions of the various other departments, I take it, in reporting cash?

THE WITNESS: No, sir, it has not taken into account the procedures of the Controller's Office.

THE COURT: The Controller which probably spends a lot of money on this, too. You have to report cash and have auditors and certified public accountants, is that. not so, so the charges could be two or three times this?

THE WITNESS: Yes, sir, it could be.

THE COURT: The actual costs.

All right, you may proceed.

BY MR. CARLISLE:

CROSS-EXAMINATION

Q Mr. Quigley, approximately how much of your time do you devote to the processing of these applications?

A Well, this was a study conducted specifically at the direction of Inspector Maloney. I normally do not process sound device permits.

Q You do not spend any time processing sound device permits?

A No, sir.

THE COURT: You do have some supervision?

THE WITNESS: Yes, sir, I have supervisory capacity.

THE COURT: There is overhead to be added to this. You have not computed any overhead in this.

THE WITNESS: No, we have not computed overhead.

THE COURT: That would be light, desks, telephone.

THE WITNESS: In that sense there are indirect costs that do show, space and utilities.

80a Quigley - cross

THE COURT: But all administration,
your costs, have not been taken into
account, supervision.

THE WITNESS: They did not take into consideration the initial amount within the License Division. What they did under the instructions was to prepare a ratio for executive management and administrative services based on the budgets, the total budget.

- Mr. Quigley, you stated in order for an application to go into effect all the steps you referred to are necessary. To the best of your knowledge do you know if permits, sound device permits, are issued without the fulfillment of all the steps you outlined?
- Only in the circustances where there would not be enough time where it wouldn't fall within the 5-day period that is indicated within the 435.
- Do you know how many permits have been issued in January 1974 to August 1974, in that period, that would be without fulfillment of all the steps?
- A January to August?

- Q Yes.
- A No, sir, I wouldn't know that.
 - Q Are you aware it is not unusual for policemen

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in the precincts to issue permits on the day of a planned event?

- A Well would you repeat that again?
- Q Are you aware it is not unusual for a policeman in precincts to issue permits for use of sound amplifiers on the very day of the event?
- A Yes, they might issue it on the date of the event.
- Ω Is it true, is it not, that is usually the custom for issuance of these permits?
- A It would depend on the workload of the precinct and on the time involved. I wouldn't know specifically.
- Q It is true, is it not, the majority of these permits are issued without fulfillment of all the steps you outlined?
- A I would not know that to my knowledge, sir.
- Q Is it true, is it not, that often policemen issue permits on the site of the rally without anyone having to go to a precinct house?
- A On the site of the rally?
 - Q On the site of the rally.
- A I wouldn't know that.

MR. CARLISLE: We would call to the Court's attention the minutes of August 20, 1975 Page 16, where Deputy Commissioner Necco

refers to the fact, and I am referring to,
beginning at Dine 19 Page 16, "We have had
instances where we have issued by the
police officers responding to the site
where sound devices are going to be used
to be issued right there on the site."

THE COURT:Did they collect the fee at that
time, the five dollar fee?

MR. CARLISLE: I was going to inquire.

Do you know if they collected \$5.00, the \$5.00 fee at that time on the site?

Well I did not have knowledge they issued them on the site but I am sure if that were the practice they would collect the \$5.00 fee at the same time.

Do you know approximately how many man hours the policemen spent on issuance of these permits at the precinct house?

A That would vary depending on the precinct. The 5th Precinct covering this particular geographical area having Chinatown and nearby locations where there are a lot of block parties and feasts of one kind or another where they use sound apparatus, would have a heavy volume and I imagine it would occupy a good portion of their time. I couldn't give you an exact figure per man hours. I would assume

that in most of the precincts where there wouldn't be a heavy demand it would be a part-time sort of function.

By part-time function could you estimate how much time the police officers might spend in a precinct on performance of this task?

MR. DE WITT: Your Honor, may we have the question clarified? Is that the performance of completing the clerical operations involved?

- O That is what I mean.
- A Completing the clerical operation?
 - Q Let me clarify that.

In completing - - in accepting the application and issuing the receipt as well as the permit.

- A I would say that taking it from the beginning where the report had to be - where the application had to be prepared by the person seeking the permit and answering his questions and later going through the clerical steps that we outlined before I would say it would easily take an hour.
- Q How long do you think it would take for an applicant to - strike that.

How long do you think it would require for a police officer to observe a person in a normal circumstance to fill out an application, I believe it is Defendant's

Exhibit 1?

A It would depend I suppose to some extent on the experience of the person who was filling out the application. If he represented an organization which had been frequently looking for sound device permits I am sure he would not need counseling at all. If it were the first time he might have questions about things on here and it would take him, depending upon the person, say ten minutes or so.

Q If the applicant filled out these previously he could submit this immediately, couldn't he, or in a couple of minutes?

A Yes, if he had done it before it would not take him long to complete the application.

Q How long would it take the policeman to issue the receipt for the payment of \$5.00?

A Well under normal circumstances I suppose by and large it could not take him longer than five minutes to issue a receipt.

Q It could possibly take him one minute?

A Possibly it could take one minute.

Q How long would it take him to issue the actual permit?

A To issue the permit, I would assume it would not take - - well take into consideration notifying the person

let us say by telephone to come down and pick it up and giving it to him it would take maybe three or four minutes the most.

- Q And this could be done in handwriting, could it not?
- A The application form?
 - Q The application, the receipt and the permit?
- A The permit is typed.
- Q The permit does not necessarily have to be typed?
- A No, it is not required that it be typed.
- Q The fact that it is in handwriting is not in itself -
- A From looking at it from the central office I have seen them typed, I have not seen any handwritten ones.
- Q Have you had occasion to review how many permits you have reviewed in the past six months?
- A At the time that I did the study I reviewed what they had available in the file and the books at that time and I would say they had roughly about one a month. I didn't go into the full year.
 - Q Approximately how many permits did you review?
- A You could say something around approximately forty or fifty.

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O How many of those were in handwriting?

What I saw in the License Division were typewritten.

O Do you have any idea - -

MR. CARLISLE: Your Honor, at this
point not to burden the Court we have agreed
on a stipulation in evidence, Plaintiff's
Exhibit 2. I would like to do that now and
I 'ould like to advise the Court I have no
further questions of this witness.

THE COURT: Mark it Defendant's Exhibit 9.

Do you have any redirect?

MR. DE WITT: Yes, I have a few on redirect.

REDIRECT EXAMINATION

BY MR. DE WITT:

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Q Mr. Quigley, on direct examination didn't you testify if an application was submitted less than five days from the event where the sound device permit was going to be used the permit could be issued by the precinct?

A Yes, it was issued in the sense that they would have the document, the permit on hand, they would have the letterhead form and this would be used as a substitute for

a permit.

Q Are the forms nevertheless sent to head-quarters for processing?

A Yes, they are.

Q They are given the actual treatment as if the permit had not yet been issued?

A They are given the same treatment.

Q Why is that?

A Well, they follow the provisions of the Administrative Code. In other words they treat all the applications in the same particular routine. They do not shortcut it in a sense.

Mr. Quigley, have you ever received or has an application to your knowledge ever been received at the License Division without a receipt showing the \$5.00 fee to be paid?

I do not know of any such occurrence.

To your knowledge?

A Not to my knowledge.

MR. DE WITT: I have no further questions, your Honor.

THE COURT: I take it though that

you have had long experience in this field.

How long have you been working for the

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Police Department?

THE WITNESS: With the Police Department, twenty years.

THE COURT: So that you can say roughly it is \$10.00 in your department to issue each one of these?

THE WITNESS: We worked out a figure based on the cost analysis that would indicate altogether it would be about \$9.62.

THE COURT: About \$10.00.

THE WITNESS: About \$10.00.

THE COURT: If you figure an hour in the precinct I suppose including fringe benefits and overhead and administration that would be at least \$10.00 an hour of a uniform man's time.

THE WITNESS: The \$9.62 figure we try to estimate from our costs and what also should be brought in are field costs and it would be reflected in the \$9.62.

THE COURT: In the \$9.62, so it includes the precinct costs and your costs?

THE WITNESS: Yes.

THE COURT: But it does not include the auditing costs?

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THE WITNESS: No, sir.

THE COURT: Do you have any idea what the auditing costs would be?

THE WITNESS: No, I do not.

THE COURT: Thank you.

MR. CARLISLE: Your Honor, I would like to bring to the Court's attention that the procedure which has been outlined applies only to those permits, the issuance of those permits which fulfill all the steps Mr. Quigley referred to and it leaves the position of the plaintiffs in this case as just to custom and practice and I believe we have established this earlier in the case, for plaintiffs to go to the precinct on the day of the rally, the day before a rally to file an application and to pay five dollars and to receive a receipt and be issued a permit. If we confine ourselves to that procedure it is clear that the time that an officer might spend to issue the permit clearly does not warrant charging five dollars. I would strongly urge the Court to consider the fact that plaintiffs do contend that is

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the usual way these permits are issued.

We find that the Police Department has not presented any evidence today to the contrary.

THE COURT: Well, that really does not affect the basic problem here. Some of them undoubtedly cost less than the average and some cost a good deal more. We are talking about average costs because what they are doing is dividing the total expenditures plus overhead into the total income and that comes out at approximately ten dollars an hour. It seems to me to be a fair cost. It seems to me to be rather an underestimate of what it costs knowing what paper work is like even for private industry, which is generally a little more efficient in these matters. Just getting out a letter runs a few dollars and you have a numbe. of documents here. I imagine any really effective cost analysis would show a good deal more than ten dollars an hour on a document on the average. I do not think there is any question it costs them much rore than five dollars to issue one of these permits.

As a matter of fact, the problem that

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I have is twofold. Based on what I have heard here I think the defendant probably could make out a case where it costs probably in the order of twenty dollars now if you begin to figure auditing and everything else, which is very expensive. Which means that if we decide in favor of the defendant in this case they could raise the price to twenty dollars or perhaps even more per permit. So I really think that the case has to go, if the plaintiff is going to succeed here, on the theory it is not rermissible to charge any fee.

I think they have met the burden of showing costs and I rule that as a matter of fact.

We are dealing here really with a matter of law. I think it is also clear from the prime evidence that we took - - when was it last

September or August - -

MR. CARLISLE: August.

THE COURT: That the plaintiff is without substantial funds and this will seriously inhibit the plaintiff in the use of sound equipment if they have to pay fees. Do you want to reopen

that issue of fact?

MR. DE WITT: I thought, your Honor, he would present evidence to the fact he does not have funds. There are a number of statements on file in Albany pursuant to the Election Board. I did not think we were going to present this issue today and I did not bring them.

MR. CARLISLE: I can testify to the fact they are financially unable to pay the cost of five dollars, the cost of the fee.

THE COURT: On any extensive scale certainly, isn't that so?

MR. CARLISLE: On any scale, almost on any scale, I say they have no money to do it.

MR. DE WITT: I would think they have a substantial amount of money to pay the fee.

THE COURT: I see, so you contest then and object to the treating of them as being without funds.

MR. DE WITT: Yes, your Honor.

THE COURT: It seems to me that the burden would certainly be on the plaintiff if that is going to be an issue to establish that

point.

MR. CARLISLE: Your Honor, this puts
the plaintiff in a unique position in the
sense where there are election papers and
documents which are a matter of public record
and the plaintiff has naturally no objection
to replying to the defendant but if we read
the defendant properly it is our belief that
he will use this issue to bring into the
financial areas things that the plaintiff
would consider privileged under the First
Amendment. It is of the utmost concern to my
client he not be brought into court and subjected
to this type of examination.

THE COURT: I understand that. What is your position then, that you do not have the funds or you do have the funds or what? It is rather an inconsistent position it seems to claim you do not have the funds and yet deny the Court the power to investigate that contention.

MR. CARLISLE: Your Honor, it would be my position that all documents which are a matter of public record would be available to the Court as well as any statements as to the bank balance of

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the plaintiff as to its financial inability
to pay this fee. But we do not think it would
be fair for the plaintiff to have to testify
in detail as to all its financial matters.

THE COURT: That may be if there was an occasion to go into it, the Court can limit its inquiry under such circumstances. I am trying to find out what your contention is. Is it your contention that the statute is invalid as to any person or entity as to its financial resources or are you claiming that as applied to you it is unconstitutional because you do not have the resources? There is a different contention there. Are you claiming both?

MR. CARLISLE: We are claiming both, your Honor.

THE COURT: It does seem to me you bear the burden of showing you are not capable of paying the fee. If you do it in forma pauperis

MR. CARLISLE: It would appear to me, your Honor, before determination of that issue the first issue that your Honor referred to should be determined and in that sense our

research of the law demonstrates even if the defendants establish the contesting of fees for purpose of administration as the compelling interest when dealing with First Amendment rights - -

this case piecemeal, I want to decide it all at once. I have closed the hearing on the issue of costs. The defendant has met that burden. Are you going to present any evidence on the issue of ability to pay?

MR. CARLISLE: I would be ready to present that evidence subject - -

THE COURT: When? I had planned to dispose of the case today.

MR. CARLISLE: Your Honor, that would depend on what the Court would require.

THE COURT: I am not going to require anything. I am just sitting here as an impartial judge. It is up to counsel to present the evidence.

MR. CARLISLE: I would need time to call the Treasurer or Secretary of the United States Labor Party to appear.

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THE COURT: When are they available today? I have other cases right now.

MR. CARLISLE: May I be excused for just a minute?

(Short recess taken.)

THE COURT: Yes?

MR. CARLISLE: Your Honor, I have discussed this matter with the plaintiffs and it is the position of the plaintiffs at this time that they feel they will not proceed to attempt to prove that this statute as applied discriminately against them insofar as the five dollar fee is concerned. The plaintiffs do so solely on the ground they are not actively using bullhorns and sound equipment and though they intend to participate in election at a later time at that time it may well be the plaintiffs would choose to prove to the Court that they cannot pay the five dollar fee. If I may, your Honor, with all due respect to the Court, I would still submit that even though the administrative fee has apparently been proven to be justifiable in light of the compelling or that there is an impression of compelling

interest of the city to apply such fees to anyone who makes use of exercise of their First Amendment rights.

now stands the sole submission subject to your disagreement with my factual finding is that the statute is on its face unconstitutional because you cannot charge any fee at all for this purpose.

MR. CARLISLE: Yes, your Honor.

THE COURT: So we have strictly a matter of law.

MR. CARLISLE: Yes, your Honor.

THE COURT: Does the Police Department and the Corporation Counsel plan to submit a brief?

MR. DF WITT: Yes, your Honor, we would like to submit a post-trial brief on the question.

THE COURT: When?

MR. DE WITT: May we have ten days?

THE COURT: That will be convenient.

The only case that has been cited to be by plaintiffs which bears directly on the point is the Chester case, 253 F. Supp. 707. That

because in Chester the defendant put no proof
in at all so it really does not have any bearing
and if any at all Chester seems to support the
defendant's position as the record now stands.

It is hard for me to believe there have not been any adjudications on this issue except Chester. There have been no cases at all so far as you know in the country in which they declared constitutional on its face for loud speakers.

MR. CARLISLE: Your Honor, my research has been fairly in depth and I must advise the Court I have not found a case.

THE COURT: Defendants with make their own investigation. There is nothing on the literature on this either. I have not been able to find anything myself.

MR. CARLISLE: If the Court would be willing, your Honor, I would continue to look during the 10-day period and if I find any cases I would like to submit them.

THE COURT: All right. If you want to submit a further brief I will be happy to have

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it. Otherwise I will receive briefs in ten days and the case will then be submitted as of that time. I take it you do not want any argument, it is fairly open and shut?

MR. DE WITT: I think so

MR. CARLISLE: No argument, your Honor.

THE COURT: Thank you very much.

The hearing is closed.

* * *

2	2 EXHIBITS						
3	DEFENDANT'S				In Evide	ence	
4	1 .	Paper			6		
5	2	UF 49 letterhead fo	orm		7		
6	3	Police Department	receipt		9		
7	4	Police Department transmittal form			11		
8	5	Pink sheet, transmi	ittal for	license	s 14		
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APPEARANCES:

For Plaintiffs: JAY C. CARLISLE, II, Esq., 230 Park Avenue, New York, New York 10017.

For Defendants: W. Bernard Richland, Esq., Corporation Counsel of the City of New York, Muncipal Building, New York, N.Y. 10007. By: William P. De Witt, Esq., Assistant Corporation Counsel.

WEINSTEIN, D.J.:

Plaintiffs began this action in the summeer of 1974 while gathering petitions in connection with state and national elections. They sought injunctions against the defendants to prevent enforcement of that portion of section 435-6.0 of New York City's Administrative Code requiring a \$5.00 fee for each permit to use a sound amplification device in addressing the public. The ordinance is set out in an appendix to this memorandum.

Preliminary evidentiary hearings were held within a few days after the action was commenced because of the imminence of petition filing deadlines. The evidence showed a high probability that the plaintiff was without sufficient funds to pay the fees required in its projected street election campaign. There was a substantial probability that the ordinance would be declared unconstitutional. With the detriment to plaintiffs' First Amendment rights substantial and the possible loss to the defendants slight, immediate relief was warranted. Accordingly, the court granted a preliminary injunction requiring the defendants to issue a specified number of permits to plaintiffs without prepayment of fees.

Plaintiffs will continue to require permits in future campaigns. In no sense can this case be deemed mooted

by the 1974 elections. Cf. Cousins v. Wigoda, — U.S. —, — Sup.Ct. —, — L.Ed.2d — (1975); Williams v. Rhodes, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 2 (1968).

A full evidentiary hearing has now been held. For the reasons stated below the ordinance is found to be unconstitutional insofar as it requires payment of fees in political campaigns and a permanent injunction is granted.

FACTS

The evidence was overwhelming that the city's collection and issuance cost was over \$10.00 per permit. At least six forms and a number of telephone calls are required. A detailed time and motion study might easily justify a cost to the city four or five times the fee charged.

There is little doubt that the city would save money were it to issue permits without fee at the precinct level, thus eliminating the need for extensive recordkeeping and processing. No overwhelming need, therefore, has been demonstrated for the City's charging a \$5.00 fee. By contrast, there is a substantial detriment to small, poorly financed groups, or to individuals, wishing to conduct a continuing political campaign on city streets. The cost of paying fees each day over the course of a political ampaign for a small number of amplification devices could easily run up to many hundreds of dollars. It might inhibit campaigning in a way the speaker considered effective with a cheap, battery-operated, bullhorn.

LAW

On any current constitutional scale, the right to speak publicly on electoral matters is "fundamental," "preferred,"

and "implicit in the concept of ordered liberty," and subject only to the least practicable interference by government when it demonstrates the most "compelling state interest." See, e.g., Grosjean v. American Press Co., 297 U.S. 233, 244, 56 S.Ct. 444, 446, 80 L.Ed. 660 (1936); Palko v. Connecticut, 302 U.S. 319, 325, 58 S.Ct. 149, 152, 82 L.Ed. 288 (1937); Lovell v. City of Griffin, Ga., 303 U.S. 444, 450, 58 S.Ct. 666, 668, 82 L.Ed. 949 (1938); Hague v. Committee for Industrial Organization, 307 U.S. 496, 515-516, 59 S.Ct. 954, 964, 83 L.Ed. 1423 (1939); Murdock v. Pennsylvania, 319 U.S. 105, 115, 63 S.Ct. 870, 876, 87 L.Ed. 1292 (1943); Kramer v. Union Free School District, 395 U.S. 621, 626, 630, 89 S.Ct. 1886, 1889, 1891, 23 L.Ed.2d 583 (1969); Lubin v. Panish, 415 U.S. 709, 94 S.Ct. 1315, 1320, 39 L.Ed.2d 702 (1974). Since elections are involved, we deal here with a right "preservative of other basic civil and political rights." Reynolds v. Sims, 377 U.S. 533, 562, 84 S.Ct. 1362, 1381, 12 L.Ed.2d 506 (1964); Yick Wo v. Hopkins, 118 U.S. 356, 370, 6 S.Ct. 1064, 1074, 30 L.Ed. 220 (1885); Wesbery v. Sanders, 376 U.S. 1, 17, 84 S.Ct. 526, 535, 11 L.Ed.2d 481 (1964) ("Other rights, even the most basic, are illusory if the right to vote is undermined"). The city ordinance at issue here penetrates what Professor Henkin has characterized as "a zone of prima facie autonomy, of presumptive immunity from regulation." Henkin, Privacy and Autonomy, 74 Colum. L. Rev. 1410, 1425 (1974).

It is true that a line of cases has validated fees for processions on public streets and other exercises of First Amendment rights where the amount of the fee is reasonably related to the "expense incident to the administration of the act." Cox v. State of New Hampshire, 312 U.S. 569, 577, 61 S.Ct. 762, 766, 85 L.Ed. 1049 (1941). See, also, Farin v. Violette, 32 F.Supp. 239 (D. Mass.

1940) (validated \$25 per year or \$3.00 per day amplifier fee); Commonwealth ex rel. Hines v. Winfree, 408 Pa. 128, 182 A.2d 698 (1962) (validated \$25.00 per day amplifier fee); Posner v. Cooper, 194 Misc. 650, 83 N.Y.S.2d 460 (S.Ct. 1948) (validated \$25.00 per day amplifier fee); cf. Moffett v. Killian, 360 F.Supp. 228, 231-232 (D. Conn. 1973) (fee for legislative lobbying unconstitutional where fees in excess of administrative costs); NAACP v Chester, 253 F.Supp. 707 (E.D. Pa. 1966) (declaring a \$25.00 fee invalid when the defendant submitted no evidence with respect to the cost of processing an application for a permit).

But, in a parallel line of cases with more current vitality, the Supreme Court has declared such fees unconstitutional as a "tax" on the exercise of a constitutional right. Murdock v. Commonwealth of Pennsylvania, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292 (1943); Follett v. Town of McCormick, S.C., 321 U.S. 573, 64 S.Ct. 717, 88 L.Ed. 938 (1944); Harper v. Virginia State Board of Elections, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966). See T. I. Emerson, The System of Freedom of Expression, 310-311, 359 (1970). Cf. Wulp v. Corcoran, 454 F.2d 826 (1st Cir. 1972) (ordinance requiring the wearing of a badge and \$.75 fee unconstitutional); Etrasser v. Doorley, 432 F.2d 567 (1st Cir. 1970) (ordinance requiring registering and wearing badge and \$.50 fee unconstitutional); International Society for Krishna Consciousness v. Conlish, 374 F.Supp. 1010 (N.D. Ill. 1973) (peddler's license requirements invalid as applied to plaintiff); Gall v. Towler, 322 F.Supp. 1223 (E.D. Wisc. 1971) (ordinance requiring \$5.00 peddler's fee and \$100 transient merchant's fee invalid as applied to "underground" newspaper); Busey v. District of Columbia, 138 F.2d 592 (D.C. Cir. 1943) (\$1.00 fee on literature invalid); City of Blue Island

v. Kogol, 379 Ill. 511, 41 N.E.2d 515 (1942) (person [c]ould not be compelled to purchase, through a license tax, the privilege freely granted by the constitution").

No person,

"can be required to pay a tax for the exercise of that which the First Amendment has made a high constitutional privilege." Follet v. Town of McCormick, S.C., 321 U.S. at 578, 64 S.Ct. at 719.

It is improper to "dilute" a person's First Amendment rights:

"To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor. The degree of the discrimination is irrelevant."

Harper v. Virginia State Board of Elections, 383 U.S. at 668, 86 S.Ct. at 1082.

Particularly where a minority political party's rights are involved, the Supreme Court has recognized that what might be a relatively small fee by major party standards may cut off access to the electoral process and is, therefore, unconstitutional. See Lubin v. Panish, 415 U.S. 709, 94 S.Ct. 1315, 39 L.Ed.2d 7 (1974); Bullock v. Carter, 405 U.S. 172, 92 S.Ct. 849, 31 L.Ed.2d 122 (1972); cf. Williams v. Rhodes, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968). The First Amendment "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." Roth v. United States, 354 U.S. 476, 484, 77 S.Ct. 1304, 1308, 1 L.Ed.2d 1498 (1957); see also Abrams v. United States, 250 U.S. 616, 630, 40 S.Ct. 17, 63 L.Ed. 1173 (1919) [Holmes, J., dissenting); Stromberg v. California, 283 U.S. 359, 369, 51 S.Ct. 532, 536, 75 L.Ed. 1117 (1931).

Historically, third parties have performed an important function in the marketplace of political ideas. As Professor Hesseltine notes:

"Perhaps the major role that third parties have played has been that of promoting new government ideas and programs. Many reforms which were first offered by third parties were, in time and after they had received wide popular approval, accepted and put into operation by the major parties." William Hesseltine, Third Party Movement in the United States 100 (1962).

See also Sweezy v. New Hampshire, 354 U.S. 234, 250-51, 77 S.Ct. 1203, 1 L.Ed.2d 311 (1957); Williams v. Rhodes, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968).

The Constitution is our safeguard to an open political system. It prevents denials to individuals as well as to minority and majority political groups, of the free exercise of those political and civil rights that make it possible for them to raise issues and support candidates. It preserves the oportunity for the rich diversity of public debate on which our democracy is founded, a diversity which is increasingly important as this nation is faced with growing centralized bureaucratic controls. Even seemingly minor limits on the extent of political debate such as the fees required in this ordinance must be subject to the strictest scrutiny.

Cases such as Cox must be limited to their facts. They do not apply to ordinances charging fees for permission to use sound amplifying equipment in political campaigns. Cf. Hull v. Petrillo, 439 F.2d 1184 (2d Cir. 1971).

We need not consider whether an ordinance more narrowly drawn, scaling license fees to ability to pay, might be constitutional, for that kind of ordinance is not before us. Such an ordinance might provide infirmities of its own by

requiring extensive impermissible inquiry into associations and sources of support. Cf. N.A.A.C.P. v. Button, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963); Hull v. Petrillo, 439 F.2d 1184 (2d Cir. 1971) ("ability to pay is not a legitimate criterion for the state to employ in determining who is to express his views on its streets and who is not.").

Nor need we consider whether the portions of the ordinance requiring a permit are valid since they are not attacked by plaintiffs. Section 3 of Local Law of 1948 No. 64, which enacted section 435-6.0, provides for separability. It reads as follows:

"3. Construction Clause.—If any part of this local law or the application thereof in any person or circumstances, shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this local law or the application thereof to other persons and circumstances, but shell be confined in its operation to the section, subdivision, sentence or part of the local law and the persons and the circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the Council that this local law would have been adopted if such invalid section, provision, subdivision, sentence or part of the local law or application not been included."

Although other members of the New York community may be entitled to quietly worship and attend court or school without undue inteference from the amplified exercise of First Amendment rights, they can be protected, as provided in the specific terms of the ordinance, without charging loudspeaker fees. N.Y. Admin. Code § 435-6.0(g). Cf. Saia v. New York, 334 U.S. 558, 68 S.Ct. 1148, 92 L.Ed.

1574 (1948); Kovacs v. Cooper, 336 U.S. 77, 69 S.Ct. 448, 93 L.Ed. 513 (1949); People v. Dominick, 68 Misc.2d 425, 326 N.Y.S.2d 466 (1971); F. Haiman, Speech v. Privacy: Is There a Right Not to Be Spoken To?, 67 Nw. U. L. Rev. 153 (1972); Note, Permissible Scope of Sound Truck Ordinances, 58 Yale L. J. 335 (1949). Compare, Niemotko v. Maryland, 340 U.S. 268, 273, 71 S.Ct. 325, 328, 95 L.Ed. 267 (1951) (Frankfurter, J. concurring) (suggests limitations on speech such as time, place, or method are valid where the value of the social interests supporting the limitation overbalances the value of the First Amendment right being exercised), with, Kovacs v. Cooper, 336 U.S. 77, 98, 69 S.Ct. 448, 459, 93 L.Ed. 13 (1949) (Black, J. dissenting, with Douglas and Rutledge, JJ.).

If a bureaucratic system is needed to protect the rights of the majority without inhibiting those of the minority, the question is who should pay for that bureaucracy. It is the majority that appears to wish the protection so that there is no unfairness in it paying the cost. Moreover, spread over the entire community, the cost per person is miniscule, whereas if it were placed entirely upon those who have the urge to speak publicly in an amplified manner, the costs would be so prohibitive as to substantially inhibit many of them from exercising their rights. In the case before us we have the additional factor that the cost to the majority would actually be reduced if no fee were charged, since collecting the fee costs more than is collected.

Conclusion

Whatever the lest of validity of free speech limitations by the government, the balance against the fee here is so overwhelming as to remire the court to declare its collec-

tion an unconstitutional clog on the exercise of free speech and the right to participate in free elections.

Plaintiffs are entitled to a permanent injunction against collection of fees required by New York City ordinance § 435-6.0.

So ORDERED.

Dated: Brooklyn, New York March 11, 1975.

JACK B. WEINSTEIN U. S. D. J.

APPENDIX

ADMINISTRATIVE CODE OF CITY OF NEW YORK

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People v. Tolkin, 19 N. Y. 2d 648, 278 N. Y. S. 2d 619, 225 N. E. 2d 212 [1967]. ¶ 8. The Commissioner, who has a wide discretion, was not acting arbitrarily in refusing to issue license to carry a gun to petitioner, a lawyer and retired Army officer who claimed that he required the license because

he carried large amounts of money on his person in connection with his estate and insurance business but was found to be more interested in using a pistol for target Phooting than for self protection.—Matter of Kaufmann (Feary) 163 (82) N. Y. J. J. (4-29-70) 2, Col. 4 F.

§ 435-6.0° Regulation of sound devices or apparatus.--a. Legislative declaration. It is hereby declared that the use or operation of any radio device or apparatus or any device or apparatus for the amplification of sounds from any radio, phonograph or other soundmaking or sound-producing device, or any device or apparatus for the reproduction or amplification of the human voice or other sounds, in front of or outsile of any building, place or premises, or in or through any window, doorway or opening of such building, place or premises, abutting or adjacent to a public street, park or place, or in or upon any vehicle operated, standing or being in or upon any public street, park or place, where the sounds therefrom may be heard upon any public street, park or place, or from any stand, platform or other structure, or from any airplane or other device used for flying, flying over the city, or on a boat or on the waters within the jurisdiction of the city, or anywhere on or in the public streets, parks or places, is detrimental to the health, welfare and safety of the inhabitants of the city, in that such use or operation diverts the attention of pedestrians and vehicle operators in the public streets, parks and places, thus increasing traffic hazards and causing injury to life and limb. It is hereby further declared that such use or operation disturbs the public peace and comfort and the peaceful enjoyment by the people of their rights to use the public streets, parks and places for street, park and other public purposes and disturbs the peace, quiet and comfort of the neighboring inhabitants. Therefore, it is hereby declared as a matter of legislative determination that the prohibition of such use or operation for commercial or business advertising purposes and the proper regulation of such use and operation for all other purposes is essential to protect the health, welfare and safety of the inhabitants of the city, to secure the health, safety, comfort, convenience, and peaceful enjoyment by the people of their rights to use the public streets, parks and places for street, park and other public purposes and to

Section 3 of J. L. 1948, No. 04, rends as follows:

^{§ 3.} Construction Clause.—If any part of this local law or the application thereof to any person or circumstances, shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this local law or the application thereof to other persons and circumstances, but shall be confined in its operation to the section, subdivision, sentence of part of the local law and the persons and the circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the Council that this local law would have been adopted if such invalid section, provision, subdivision, sentence or part of the local law such invalid section, provision, subdivision, sentence or part of the local law or application not been included.

§ 435-6.0

secure the peace, quict and comfort of the city's inhabitants. It is hereby further declared as a matter of legislative determination that the expense of supervising and regulating the use and operation of such sound devices and apparatus for purposes other than commercial and business advertising purposes should be borne by the persons using or operating such devices and apparatus and that the requirement of a nominal fee for the issuance of a permit for such use and operation as hereinafter prescribed is intended to defray the expenses of regulating such use or operation for the health, welfare and safety of all the people.

b. Definitions. As used in this section:

1. The term "sound device or apparatus" shall mean any radio device or apparatus, or any device or apparatus for the amplification of any sounds from any radio, phonograph, or other sound-making or sound-producing device, or any device or apparatus for the reproduction or amplification of the human voice or other sounds;

2. The phrase "to use or operate any sound device or apparatus in, on, near or adjacent to any public street, park or place," shall mean to use or operate or cause to be used or operated any sound device or apparatus in front or outside of any building, place or premises, or in or through any window, doorway or opening of such building, place or premises, abutting on or adjacent to a public street, park or place, or in or upon any vehicle operated, standing or being in or on any public street, park or place, where the sounds therefrom may be heard upon any public street, park or place, or from any stand, platform or other structure, or from any other airplane or other device used for flying, flying over the city, or on a boat or on the waters within the jurisdiction of the city, or anywhere on the public streets, parks or places.

c. Use and operation of the sound devices and apparatus for commercial and business advertising purposes. It shall be unlawful for any person to use or operate any sound device or apparatus in, on, near or adjacent to any public street, park or place, for commercial and business advertising purpose.

d. Use and operation of sound devices and apparatus for other than commercial and business advertising purposes; permit required. It shall be unlawful for any person to use or operate any sound device or apparatus, in, on, near or adjacent to any public street, park or place, unless he shall have first obtained a permit to be issued by the commissioner in the manner hereinafter prescribed and unless he shall comply with the provisions of this section and the terms and conditions prescribed in such permit.

e. Applications.—Each applicant for a permit to use or operate a sound device or apparatus in, on, near or adjacent to any public street, park or place shall file a written application with the commissioner, at the police precinct covering the area in which such sound device or apparatus is to be used or operated, at least five days prior to the date upon which such sound device or apparatus is to be used

or operated. Such application shall describe the specific location in which such sound device or apparatus is proposed to be used or operated, the day and the hour or hours during which it is proposed to be used or operated, the volume of sound which is proposed to be used measured by decibels or by any other efficient method of measuring sound, and such other pertinent information as the commissioner may deem necessary to enable him to carry out the provisions of this section.

f. Issuance of permit; terms .-- The commissioner shall not deny a permit for any specific time, location or use, to any applicant who complies with the provisions of this section, except for one or more of the reasons specified in subdivision g hereof or for non-payment of the fee prescribed in subdivision h hereof, or to prevent over-lapping in the granting of permits. Each permit issued pursuant to this section shall describe the specific location in which such sound device or apparatus may be used or operated thereunder, the exact period of time for which such apparatus or device may be operated in such location, the maximum volume of sound which may be employed in such use or operation and such other terms and conditions as may be necessary, for the purpose of securing the health, safety, comfort, convenience and peaceful enjoyment by the people of their right to use the public streets, parks or places for street, park or other public purposes, protecting the health, welfare and safety of the inhabitants of the city, and securing the peace, quiet and comfort of the neighboring inhabitants.

g. Special restrictions.- The commissioner shall not issue any permit for the use of a sound device or apparatus:

1. In any location within five hundred feet of a school, court-house or church, during the hours of school, court or worship, respectively, or within five hundred feet of any hospital or similar institution;

2. In any location where the commissioner, upon investigation, shall determine that the conditions of vehicular or pedestrian traffic or both are such that the use of such a device or apparatus will constitute a threat to the safety of pedestrians or vehicular operators;

3. In any location where the commissioner, upon investigation, shall determine that conditions of overcrowding or of street repair or other physical conditions are such that the use of a sound device or apparatus will deprive the public of the right to the safe, comfortable, convenient and peaceful enjoyment of any public street, park or place for street, park or other public purposes, or will constitute a threat to the safety of pedestrians or vehicle operators;

4. In or on any vehicle or other device while it is in transit:

5. Between the hours of ten p. m. and nine a. m.

h. Fees—Each applicant for a permit is seed under the provisions of this section shall pay a fee of five dollars for the use of each sound

device or apparatus for each day, provided, however, that permits for the use of such sound devices or apparatus shall be issued to any bureau, commission, board or department of the United States government, the state of New York, and the city of New York. without fee.

i. The provisions of this section shall not apply to the use or operation of any sound device or apparatus by any church or synagogue on or within its own premises, in connection with the religious

rites or ceremonies of such church or synagogue.

j. Violatious-Any person who shall violate any provision of this section, upon conviction thereof, shall be punished by a fine of not more than twenty-five dollars or imprisonment for thirty days, or

Rules and regulations-The commissioner shall have the power to make such rules and regulations as may be necessary to carry out

the provisions of this section.

(As amended by L. L. 1939, No. 172, November 20; as venumbered by L. L. 1932, No. 50, October 29; and as amended by L. L. 1948, No. 64, October 1.)

CASE NOTES

1 1. Complaint, in action for declara-tory judgment of unconstitutionality tory judgment of unconstitutionality of Administrative Code § 435-6.0, which proposes to regulate the use of mechanically amplified sound upon and adjacent to public streets, parks and places, held insufficient with respect to plaintid's who were merely alleged to manufacture and sell sound continuent, as the law did not retrict alleged to manufacture and sell sound equipment, as the law did not retrict the manufacture and sale of such equipment but merely the use and operation thereof. Such plaintiffs failed to alige facts fadienting that their rights were curtailed or directly affected by the statute, even though they did allege that the market for their equipment had been drustically curtailed. However, as to plaintiffs

who actually operated devices and a, who actually operated actions and apparatus apparently interdicted by the statute, the complaint was sufficient as a matter of pleading.—Cold Sound, Inc. v. City of N. Y., 125 Misc. 201, 80 N. Y. S. 2d 860 [1919].

§ 2. On motion to dismiss complaint includes in action for a declaratory judgment as to unconstitutionality of Admin-istrative Code § 435-6.0, regulating use of mechanically amplified sound upon and adjacent to public streets, parks and places, Court would not be justified in taking indicial notice of concrete situations likely to arise under the statute. A pronouncement of the merits of the legislation would have to await the joinder of issue.

§ 435-7.0 Accomblies. . Public worship .- It shall be mila vful for any person to be concerned or instrumental in collecting or promoting any assemblage of persons for public worship or exhortation, or to ridicule or denounce any force of religious belief, service or reverence, or to preach or expound atheism of agnosticism, or under any pretence therefor, in any street, clergyman or minister of any denomination, hovever, or any person responsible to or regularly associate with any church or incorporated missionary society, or any lay-preacher, or lay-reader mny conduct religious services, or any authorized representative of a duly incorporated organization devoted to the advancement of the principles of atheism or agnosticism may preach or expound such cause, in any public place or places specified in a

Notice of Appeal.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

74 C 1190

UNITED STATES LABOR PARTY, a/k/a NATIONAL CAUCUS OF LABOR COMMITTEES; ANTON H. CHAITKIN; ELIJAH C. BOYD; DAVID WOLINSKY; ROBYN PRESS; JEFFREY BRYAN, Plaintiffs.

against

MICHAEL J. CODD, individually and as Commissioner of the Police Department of the City of New York; and ANTHONY ELAR, individually and as Chief of Police of Freeport, Long Island,

Defendants.

SIRS:

Notice is hereby given that the defendants hereby appeal to the United States Court of Appeals for the Second Circuit from the order of Hon. Jack B. Weinstein entered hereir on or about March 11, 1975 which granted plaintiffs a permanent injunction against collection of certain fees.

Dated: New York, N. Y. April 10, 1975

Yours, etc.,

W. Bernard Richland Corporation Counsel Attorney for Defendants Office & P.O. Address Municipal Building New York, N.Y. 10007

By /s/ CARL SANDERS

To: Jay C. Carlisle, II, Esq. Attorney for Plaintiffs 230 Park Avenue New York, N. Y. 10017

Transcript, dated August 20, 1974.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

United States Courthouse Brooklyn, New York

August 20, 1974

Before:

HONORABLE JACK WEINSTEIN, U.S.D.J.

HENRI LEGENDRE
COURT EMPORTER

APPEARANCES:

JAY CARLISLE, Esq. Attorney for Plaintiffs

ADRIAN P. BURKE, Esq. Corporation Counsel

By: Thomas Lawson, Esq. Of Counsel Attorney for Defendants

Mr. Lawson: My papers were served on the Court.

The Court: These are the papers?

Mr. Lawson: There are some corrections—in the hasto

of time-

The Court: Just make them in pen, if you want.

Transcript, dated August 20, 1974.

Has there been harassment since the hearing before Judge Neaher?

Mr. Carlisle: There has been three instances in Queens. We have one young lady who claims to have been struck in the head and where she claims to have advised the policeman on the telex and he wasn't apparently aware of it.

Deputy Commissioner Necco: I am Deputy Commissioner in charge of legal matters for the Police Department. I take umbrage with the police action of harassment.

The Court: Alleged harassment. I don't know whether there was any harassment or not. The claim is harassment.

Mr. Carlisle: May I introduce Mr. David Jay, a lawyer from Buffalo, who represented the Labor Party in a case there for a preliminary injunctive.

The Court: How would you gentlemen like to proceed? Mr. Lawson: I have just been furnished an interim complaint. I had some papers here from Mr. Carlisle. These are exhibits 2, 3 and 4.

If the Court please, I just received an amended complaint this morning containing two additional allegations not attached to the complaint but rather attached to the memorandum of law in the amended complaint, which refers to Exhibit D through H, I believe—through H, which I don't have.

Mr. Carlisle: I have copies of those exhibits. You have Exhibit E?

Mr. Lawson: No.

Mr. Carlisle: Exhibit G and H would correspond.

Mr. Lawson: Still missing F, G and H.

Mr. Carlisle: You have to excuse me, during the rush to compile these exhibits—H doesn't exist. Exhibit G, relating to harassment, is attached to the memorandum as is A attached to A-1. And I filed the original exhibit with

Transcript, dated August 20, 1974.

the Clerk of the Court. I'll provide you with copies of those.

Mr. Lawson: These are in addition to those attached to the memorandum of law which you gave me.

Mr. Carlisle: Exhibit G is Exhibit A on the memorandum of law. I apologize for not having these exhibits ready. That's not my usual custom—

Mr. Lawson: Your Honor, in light of the fact, number one, I have just been served with an amended complaint, and number two, in light of the fact that the memorandum of law—I would request an adjournment so I can address myself to those questions. I am totally unprepared today on those issues.

The Court: We have to move ahead. There is an election coming up and these people have to get their petitions out to the public.

Mr. Lawson: Well, your Honor, there are certain facts, certain summonses that are brought before the Court. There is a factual issue involved in those summonses. We request some time so we could have an opportunity to oppose—there is one parking ticket involved. I am not sure how that's germane. I am not certain as to how to proceed today. I am not prepared.

The Court: Well, let the plaintiffs put on their case. You have an assistant or an associate and you can continue your research. Let's see what the facts are. Call your witness, please.

Mr. Solcmon: The Village of Freeport hasn't received the memorandum of law. The initial complaint which was served on Friday, there are only two allegations relating to the village, paragraphs seven and eight. I would ask that the Court—I don't think that Mr. Carlisle is saying this is against the village, if the Court would dismiss it.

The Court: Unless they want to voluntarily discontinue.

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Mr. Carlisle: No, your Honor, we do not.

The Court: You are in. Serve them with papers.

Mr. Solomon: I don't have a copy of the amended complaint.

The Court: Here's the complete file. You can look at it. These election cases and matters of this kind never run as smoothly as the big anti-trust cases. We'll do the best we can to see that everybody has full opportunity to be heard and to examine everything, but we have to move ahead.

Mr. Lawson: May I note my objection to the record.

The Court: You may. Do you have a witness?

Mr. Carlisle: I would like to call Mr. Neco as our first

Mr. Lawson: May I request an offer of proof?

The Court: No.

Luis M. Neco, having been first duly sworn, was examined and testified as follows:

The Court: What are you going to have this witness testify to?

Mr. Carlisle: We are going to have the witness, head of the Legal Division, testify as to the directive which his office has issued to police officers, and a copy of that directive referred to on page 1 of plaintiff's memorandum. We also will ask him to testify as to certain elements of City Ordinance 435-60.

The Court: I don't understand. What is he going to say that I can take judicial notice of?

Mr. Carlisle: There is reference in the statute to language referring to specific location. One of the contentions that the plaintiffs make is that when they file for permits for specific locations the location is discriminately applied against plaintiffs, and plaintiffs move out of that location, they are immediately issued summonses.

The Court: You want to ask him about the practice of the Police Department?

Mr. Carlisle: Yes.

The Court: All right, you may question, subject to objection, if he knows; probably does.

The Witness: I have had discussion with administrators of the division.

The Court: All right, ask your questions.

Direct Examination by Mr. Carlisle:

Q. Mr. Neco, will you please describe briefly at your position consists of in the Police Department. am general counselor to the Police Department and lead advisor to the Police Commissioner.

Q. You are an attorney? A. I am.

Q. In the course of your administrative responsibilities do you receive reports from various subordinates, precinct commanders, regarding the legal affairs of the Police Department? A. I certainly receive—my office receives requests for legal opinions. We also advise through our attorneys anyone, any member of the Police Department, from the police officer on the beat to the Police Commissioner, legal issues that concern that particular individual.

Q. Mr. Neco, have you had an opportunity to read Section 435-60 of the City Ordinances of the City of New

York? A. Yes, sir.

Q. I am referring to page 3 in the Administrative Code. It's page 772 of the Ordinance, line 1, wherein it states:

"Such application shall describe the specific location in which such sound device or apparatus is supposed to be used or operated." Has the Department issued any rules or regulations under Subdivision K to describe what specific locations consist of? A. There is in the Police Department a guideline with regard to permits.

Q. Would those guidelines specifically clarify what this wording "specific location" means? A. I could indicate what the practice of the Department has been in interpreting locations, and that is, when an applicant comes to the Police Department seeking a sound device permit he must specify all of the locations that he intends to use that per-

mit on that particular day.

Now, theoretically, he could specify one million locations, so long as the locations are not at variance with the restrictions that are contained in the administrative code, and they are untrined in Subdivision C. So long as they are not at variance with that we would issue a permit to cover theoretically one million locations for that day. Thus I would say that the permit is not confined to just one location.

Q. If a specific individual or political party applied for a permit and designated the location, could they designate for example, would the location consist of an intersection or consist of an area of 4,000 square feet? What limits are placed on how much of a location they could have? A. I think that the restrictions are readily contained in Subdivision G, and cortainly self-explanatory. Now, if the person issuing the permit—that is, the precinct to which the permit was sought—has the knowledge that there will be an interference with vehicles or pedestrian traffic, that it will constitute a threat to vehicles or pedestrians, he may be denied that particular location. However, it is the practice, as I understand it, where a particular location is sought and it does cause a problem, we, the precinct com-

mander, seeks to request that the individual seeking the permit pick an alternate. We do not, as I understand it through my discussions of yesterday, we do not out-and-out disapprove, but we seek to advise the applicant as to our disapproval and the reason why and to ask that the applicant select an alternate or alternates, as the case may be.

Q. There is reference in Subparagraph G-2, and 3 to investigations which are conducted to determine if permits can be granted under those subsections. What does this investigation consist of art who conducts it? A. The recinct commander who knows the condition in his precinct.

Q. So these are conditions that he knows of, not conditions that he would, upon a request, assign someone to investigate. A. I don't know. I couldn't answer that question. I do know normally we rely on the expertise of the police commander and his subordinate on knowing the conditions in the precinct.

Q. So if a precinct commander thought a particular location was overcrowded he could deny a permit for that location without personally a subordinate checking it out?

Mr. Lawsen: Objection, speculative. The Court: I'll allow it; if you can answer it.

A. I am unable to answer it.

Q. We are trying to establish when members of the political party ask for a particular permit they are refused that location without any reason or an investigation, other than the fact whoever is at the precinct believes that that area should not be subjected to use of bullhorns, and I am trying to establish the extent to which that denial is based upon investigation. A. I don't know any specific case where denial has occurred or what particular location was requested, so therefore I am unable to answer that question.

Q. It's not necessary to conduct an investigation in order to deny a request for a permit for a particular location. A. I would take it if someone wanted a permit for 42nd Street and Times Square, right by the subway entrance at 5 o'clock rush hour, the precinct commander would have such knowledge of his precinct conditions. He could determine if it's on a work day, as a matter of his expertise, that would create a problem with pedestrians and vehicular traffic.

Q. Does your office instruct policemen on the beat when they observe someone using, a bullhorn, are they instructed to ask that person if they have a permit? A. My office does not instruct officers on the beat with regard to the permits unless we are specifically asked a legal question.

Q. Let me rephrase the question. Is it customary practice to the best of your knowledge that police officers on the beat, to ask someone using a bullhorn if they have a permit? A. I don't know. I could speculate. I would assume they would ask for a permit, but I don't know if that does in fact occur.

Q. There is an element of discretion whether an officer can ask someone whether he does or does not have a permit when using a bullhorn? A. I don't know.

Q Are you aware in the instant matter the plaintiffs since August 2 received at least ten, if not more, summonses for use of bullhorns, and the plaintiffs have alleged—

The Court: You better break that up. Mr. Lawson: I object to the form.

Q. Are you aware that plaintiffs have received summonses since August 2nd or been engaged in petition? A. I am aware of only one instance where three individuals received a summons as alleged in one of the affidavits to the original complaint, which my office investigated with

regard to the facts therein, and the officers involved were police officers Parente and Frank Angelo.

The Court: That wasn't a bullhorn or sound? The Witness: No; as to other summonses there are certain allegations in the amended complaint, your Honor, with attachments to the memorandum of law which was served this morning upon the corporation counsel, and I cannot testify as to the veracity of the truth of the allegations.

The Court: Does the Department have any computer record of summonses?

The Witness: It would be extremely difficult.

The Court: You don't put that on a computer? The Witness: We could not for example look for how many complaints were issued or summonses were issued for jaywalking or no sound device.

The Court: I am just curious whether the regular parties get as many summonses as these people claim they get.

The Witness: I have no knowledge one way or the other.

The Court: It's difficult to prove these things. I don't want to spend a week taking testimony. If you have some kind of records that would give it to us quickly—

The Witness: I can seek to find out.

The Court: Find out. You may have some kind of study that was made.

The Witness: Is that with regard to what type of summons?

The Court: We were talking about the sound device or apparatus. For example, I can take judicial notice of the fact that that Section 435.60 points out Subdivision G-4 is not normally enforced against

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political parties. It's the custom in New York for political parties to ride around the streets with these sound trucks. I have never seen one of them

The Witness: I don't know, your Honor. We

have to look into that.

The Court: And I would like to get this thing decided fairly quickly; either they are being discriminated against or they are not.

Mr. Lawson: Can I be heard briefly?

The Court: Let's see if we can get the facts on it. Mr. Lawson: There was a request for the Deputy Commissioner to get some information regarding summonses issued to people in other political parties. I think that under the circumstances police inquiry—which political party someone belongs to might be totally inappropriate.

The Court: Let's see if they have it. It may be that it isn't a policy but that individual policemen make discrimination. I don't know. If you don't have the information, then we'll have to proceed in the regular course through witnesses, but I would

prefer to avoid it. Go ahead, continue.

Mr. Carlisle: We would note, we'll be able to produce somebody who will testify, while driving the vehicle in transit, using sound amplifiers, they have been issued summonses.

The Court: We have to find out whether other parties get summonses, too. I have seen a lot of people riding around the street, that doesn't mean that they haven't been picked up. You see a lot of people doing a lot of things they shouldn't be doing.

The Witness: I sent somebody to telephone whether we could find readily available facts and

figures for your Honor.

By Mr. Carlisle:

Q. The five dollar fee that is required for issuance of a permit, that five dollar fee I presume is for each permit that is issued. A. For a permit.

Q. Is that in effect for one day? A. Yes.

Q. If one were to leave the site where the five dollar fee was applicable and move two blocks south of the site, would he then be, in your opinion—would it be customary procedure to issue him a citation, a summons? A. If the permit does not indicate that location, it would be proper to issue him a summons for violation of the administrative code.

The Court: Do you have to get it by precinct or city-wide?

The Witness: What you do, your Honor, normally we seek to encourage people using the sound device permit—in that area where he has the most locations noted, we seek to encourage him to seek his permit from the precinct in that area.

The Court: He could go to the City Central Agency.

The Witness: Let us assume that a person notes a hundred locations that he wants to use that sound device on. If the highest number of locations say ten is in the 24th Precinct, then the 24th Precinct should issue it, although it's applicable to all other locations that are specified city-wide.

The Court: And how long does it take to get it? Can you get it the same day?

The Witness: We have had instances where we have issued by the police officer responding to the site where the sound devices are going to be used and issuing right there on the site.

The Court: I am curious about this whole thing. I wasn't aware of it.

Neco-Voir dire.

When mayoralty candidates go down to the site with a bullhorn, they get a permit for that?

The Witness: I don't know, your Honor.

The Court: How many of these are issued each year?

Mr. Lawson: Can I have a moment please, your Honor.

The Court: Yes, sure.

The Witness: For 1973 I am not sure how accurate these figures are, these figures come from our License Division. For 1973 these figures indicate that 3,040 permits were issued.

The Court: That's for the whole city?

The Witness: For the entire city.

The Court: It must have been 200,000 people during these campaigns at different days.

The Wifness: I don't know, your Honor.

The Court Very strange. The whole thing is a new area for me. That's why I am asking.

Mr. Lawson: May I briefly ask one question with respect to this?

The Court: Yes.

Voir Dire Examination by Mr. Lawson:

Q. Deputy Commissioner, do you know if those numbers reflect multiple applications for permits or single permits? A. It's only possible to tell from these facts and figures, and I don't have such information.

The Court: All right, go ahead.

Direct Examination by Mr. Carlisle (Continued):

Q. Could you tell me what the five dollar fee is used for?

A. To cover the cost of processing—

Q. Deputy Commissioner, during the course of your administration of your responsibility, do you have an opportunity to consult with other administrators in the Police Department? A. I don't quite understand that question.

Q. Is it your practice to have meetings with other heads of different divisions in the Police Department? A. Are

you talking about other Deputy Commissioners?

Q. Yes, sir. A. From time to time, depending on cir-

cumstances, but not on a scheduled basis, no.

Q. Could you tell me to the best of your knowledge, if you are aware, whether or not a special investigative file on the United States Labor Party exists?

Mr. Lawson: I'll object, your Honor. I'm not sure what a special file is.

The Court: Rephrase it. Apparently the Commissioner doesn't understand the question.

- Q. Commissioner, is it the practice of the Police Department, to the best of your knowledge, to chesk and retain intelligence files on various political groups or groups that the Police Department consider need to be investigated for purposes of law enforcement? A. We certainly have an intelligence division within the Police Department. I am not familiar with the operation of the intelligence division.
- Q. Do you personally know the man who is in charge of the intelligence division? A. The person in charge of the intelligence division is Assistant Chief Inspector John Keenan.
- Q. When is the last time you saw Mr. Keenan? A. Last Thursday.
- Q. Was that prior to our or subsequent to the date that we had our preliminary hearing? A. It had nothing to do with this group.
- Q. Would it be possible to tell me if it was price or subsequent to the hearing we had on Thursday? A. I don't

recall whether it was in the morning or afternoon, but again was at my request following a telephone call that I had made to him beginning the week before, before this complaint had been filed, and it had to do with a matter

totally unrelated to this group.

Q. Did you ever discuss the United States Labor Party with him? A. I am trying to think back of the prior lawsuit that was brought in the Southern District of New York. I don't believe I did discuss it with anyone but my fellow attorneys, the corporation counsel and the legal advisor to the Intelligence Division. I don't recall whether I discussed this group with anyone else within the Intelligence Division. I believe I did not, but I am not quite certain.

Q. Who is the legal advisor for the Intelligence Division?

A. At that time a Sergeant Henry Ulbright.

Q. Is it customary practice for police officers assigned to the Intelligence Division to go out onto the street and observe members of an organization who intelligence files are gathered for?

Mr. Lawson: Objection.

The Court: Are you familiar with the practice? The Witness: I am not that familiar with the Intelligence Division that I could give anything that can be anything other than an accurate guess.

Q. I am not trying to delve into these matters other than to establish whether or not what we consider to be harassment committed against the plaintiffs by defendants as a result of any information or data which has been accumulated and if so, whether or not that harassment, as we allege, is of a fairly continual nature so that the plaintiffs in attempting to gather signatures—

Mr. Lawson: May I be heard?

The Court: If the witness doesn't know the details, it's no point in asking him. If you want to

call somebody who knows about the Division, you may do that. After all, he is a lawyer. Try to bring your examination of him to a close.

Q. I have one more question. The directive that was issued on August 15, 1974, which you are familiar with, will that directive remain in effect until the petitioning period terminates on or about September 13? A. I assume so. I see no reason why that directive should be withdrawn.

Q. And will you continue to take disciplinary action against any officers who might violate that directive? A. Certainly, where the violation would appear to be intentionally or where the violation is of such a manner it indicates reckless behavior on his part.

I would imagine that his precinct commander, when brought to his attention, would take disciplinary action against that police officer.

Mr. Carlisle: I have no further questions.

Mr. Lawson: I have no questions.

The Court: Call your next witness, please.

Mr. Carlisle: In order to move ahead as quickly as possible, I would like to apprise the Court of who I propose to call. We would like to call one of the plaintiffs, Mr. Elijah Boyd, who is a candidate for United States Senator from New York to testify from his personal experience. We also have here a gentleman who is in charge of receiving, on behalf of the Labor Party organization, complaints on harassments which are filed, and he would—

The Court: Proceed any way you would like.

ELIJAH CUNNINGHAM BOYD, Jr., called as a witness herein, having been first duly sworn, was examined and testified as follows:

AFFIDAVIT OF SERVICE ON ATTORNEY OF PRINTED PAPERS

State of New York, County of New York, ss.:	urtis Brown
being duly sworn, says, that on the 26 day of	June 1975
At No 230 . PARK Ave in the Borough of MAN.	in The City of New York, he served three copies
of the suresed Cappellon's appendix upon	Jay C. Carlisle
the attorney for the Plainliff's appell	in the within entitled action by delivering
three copies of the same to a person in charge of said attorney's office	
leaving the same with him.	
Sworn to before me, this 262	Centra Brown
day of June 1975	
John Calia	Vorm 221-1M-1120058(57)
Notary Public, State of New York No. 41-5573935 Queens County	
Certificate Filed in New York County Commission Expires March 30, 1976	